

Chapter 26 Telephone Fraud Prevention Act

Part 1 General Provisions

13-26-101 Definitions.

As used in this chapter:

- (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) "Director" means the director of the division appointed under Section 13-2-103.
- (4) "Division" means the Division of Consumer Protection created in Section 13-2-102.
- (5) "Fictitious personal name" means a name other than an individual's legal name.
- (6) "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.
- (7) "Material statement" means a statement a seller or a solicitor makes that a person of ordinary intelligence or prudence would consider important in deciding whether to accept an offer extended through a telephone solicitation.
- (8) "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.
- (9) "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.
- (10) "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 solicitor:
 - (i) makes a telephone solicitation; or
 - (ii) causes a telephone solicitation to be made.
- (11) "Solicitor" means an individual who engages in a telephone solicitation on behalf of a seller.

- (12) "Standing order arrangements," means a product or service that a person provides, 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.
- (13)
- (a) "Telephone solicitation" 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 13-26-104, 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 this Subsection (13)(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 13-26-104(2)(b)(iv); or
- (ii) a person making or causing to be made an unsolicited telephone call, including calls made by use of an automated telephone dialing system.
- (b) "Telephone solicitation" does not include a sale or solicitation that occurs solely through a website without the use of a telephone call.

Renumbered and Amended by Chapter 95, 2026 General Session

13-26-102 Registration and surety bond or certificate of deposit required.

- (1)
- (a) Unless exempt under Section 13-26-104, a 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 a business operation in Utah.
- (2) To register as a seller, a person shall submit to the division a registration application:
- (a) in the manner the division determines; and
- (b) that includes:
- (i) a registration application fee in an amount the division determines in accordance with Section 63J-1-504;
- (ii) any information the division requires by rule the division makes in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act; and
- (iii) a designated registered agent for service of process in this state and the registered agent's:
- (A) name;
- (B) street address;

- (C) mailing address; and
 - (D) telephone number.
- (3) A seller that is subject to this chapter shall obtain and maintain the following:
- (a) a surety bond issued by a surety authorized to transact security business in this state; or
 - (b) a certificate of deposit held in this state in a financial institution authorized under the laws of this state or the laws of the United States to accept deposits from the public.
- (4) The surety bond or certificate of deposit described in Subsection (3) shall be:
- (a) in the amount of:
 - (i) \$25,000 if:
 - (A) the seller or an affiliated person has not 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) the seller or an affiliated person has not 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 an affiliated person has violated this chapter in the three-year period immediately before the day on which the seller files the application; and
 - (b) payable to the division for the benefit of a consumer who incurs damages as the result of the seller's violation of this chapter.
- (5) If the consumer recovers actual damages from an action resulting from the seller's violation of this chapter before the division distributes the funds in the surety bond or certificate of deposit described in Subsection (3) to the consumer in accordance with Subsection (4)(b), the division may recover from the surety bond or certificate of deposit:
- (a) administrative fines;
 - (b) civil penalties;
 - (c) investigative costs;
 - (d) attorney fees; and
 - (e) other costs of collecting and distributing funds under this chapter.
- (6) A seller shall submit to the division, as part of the seller's registration application:
- (a) a fingerprint card in a form the division approves;
 - (b) consent to a criminal background check conducted by:
 - (i) the Bureau of Criminal Identification created in Section 53-10-201; or
 - (ii) another state or federal agency that performs criminal background checks; and
 - (c) provide a disclosure that states whether a seller or an affiliated person has been convicted of a felony or misdemeanor involving theft, fraud, or dishonesty, in the 10-year period immediately preceding the day on which the seller files the application.
- (7) A seller shall pay the cost of:
- (a) the fingerprint card described in Subsection (6)(a); and
 - (b) the criminal background check described in Subsection (6)(b).
- (8) A seller registration is effective for one year after the day on which the division approves a seller's registration application.
- (9) To renew a seller registration, a seller shall submit a registration renewal application to the division at least 30 days before the day on which the seller's registration expires.
- (10) Registration under this section does not constitute an approval or endorsement of the seller by the division or the state.

13-26-103 Denial, suspension, or revocation of an application or registration.

In accordance with Chapter 2, Division of Consumer Protection, and Title 63G, Chapter 4, Administrative Procedures Act, the division may initiate adjudicative proceedings to deny, suspend, or revoke an application or registration if:

- (1) the division finds that the denial, suspension, or revocation is in the public interest; and
- (2)
 - (a) the registration is incomplete, false, or misleading; or
 - (b) the applicant or the applicant's principal:
 - (i) violates, causes a violation, allows a violation, or fails to satisfy the requirements of a provision of:
 - (A) this chapter; or
 - (B) a rule the division makes in accordance with this chapter;
 - (ii) violates Chapter 11, Utah Consumer Sales Practices Act;
 - (iii) is enjoined by a court, or is the subject of an administrative or judicial order issued in Utah or another state, if the order:
 - (A) includes a finding or admission of fraud, breach of fiduciary duty, or material misrepresentation; or
 - (B) is based on a finding of a lack of integrity, truthfulness, or mental competence;
 - (iv) is convicted of a crime involving theft, fraud, or dishonesty;
 - (v) obtains or attempts to obtain a registration by misrepresenting a material fact;
 - (vi) fails to provide information the division requests;
 - (vii) fails to pay an administrative fine the division or an administrative or judicial order imposes;
or
 - (viii) fails to pay the fee to file a registration application or a renewal application.

Enacted by Chapter 95, 2026 General Session

13-26-104 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 13-26-106 and 13-26-108:
 - (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, or standing order 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.

Renumbered and Amended by Chapter 95, 2026 General Session

13-26-105 Right of rescission -- Cancellation.

- (1) As used in this section, "business day" means a day other than Saturday, Sunday or a federal or state holiday.
- (2) Before engaging in a solicitation with a consumer, a seller or a seller's solicitor shall orally advise the consumer of the seller or the seller's solicitor's:
 - (a) legal name;
 - (b) telephone number;
 - (c) complete mailing address; and
 - (d) email address.
- (3)
 - (a) Except as provided in Subsections (3)(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 at or before 11:59 p.m. on the third business day after the day on which the person receives the merchandise or premium, whichever is later, provided that the seller or the seller's solicitor advises the purchaser of the purchaser's cancellation rights under this chapter at the time the seller or seller's solicitor makes the solicitation.
 - (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 after the day on which the person receives the merchandise or premium.
 - (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 (6), a seller shall provide a full refund to a purchaser who cancels a sale in accordance with this section.
- (4) A purchaser may cancel a sale by:

- (a) mailing a notice of cancellation to the seller or seller's solicitor's address, or email address the seller or seller's solicitor provides in accordance with Subsection (2); 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 address or email address in accordance with Subsection (2), sending a written notice of cancellation to the division's office.
- (5)
- (a) If a purchaser cancels a sale and the seller or the seller's solicitor complies with Subsection (2), 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 the information required by Subsection (2), a purchaser who cancels a sale is not required to return any canceled goods to the seller.
- (6)
- (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 (6)(a) from any refund due the purchaser.

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13-26-106 Penalties and enforcement.

- (1) In addition to the division's enforcement powers described in Chapter 2, Division of Consumer Protection:
- (a) the director may impose an administrative fine of up to \$2,500 for each violation of this chapter; and
 - (b) the division may bring an action in a court with jurisdiction to enforce a provision of this chapter.
- (2) If the division brings an action in accordance with Subsection (1)(b):
- (a) the court may:
 - (i) declare that an act or practice violates a provision of this chapter;
 - (ii) issue an injunction for a violation of this chapter;
 - (iii) order disgorgement of any money received in violation of this chapter;
 - (iv) order payment of disgorged money to an injured purchaser or consumer;
 - (v) impose a fine of up to \$2,500 for each violation of this chapter; or
 - (vi) award any other relief that the court deems reasonable and necessary; and
 - (b) if the court grants judgment or injunctive relief to the division, the court shall award the division:
 - (i) reasonable attorney fees;
 - (ii) court costs; and
 - (iii) investigative fees.
- (3)
- (a) A person that violates an administrative or court order issued for a violation of this chapter is subject to a civil penalty of no more than \$5,000 for each violation.
 - (b) A court may impose a civil penalty authorized under this section in a civil action brought by the division.
- (4)

- (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 (5)(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.
- (5) For purposes of this section, each telephone solicitation a person makes in violation of this chapter is a separate violation.

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13-26-107 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.

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13-26-108 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 is exempt from registration under this chapter;
 - (b) in connection with a telephone solicitation, make or cause to be made a false 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 13-26-105;
 - (e) unless the seller is exempt under Section 13-26-104, fail to orally advise a purchaser of the purchaser's right to cancel under Section 13-26-105;
 - (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 13-26-104, fail to orally advise a purchaser of the purchaser's right to cancel under Section 13-26-105.
- (3) If a person knows or has reason to know that a seller or solicitor engages 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.
- (4) A seller or a seller's solicitor may not:
 - (a) represent that the division or the state approves or endorses the seller;
 - (b) omit from a filing with the division a material statement of fact required by:
 - (i) this chapter; or
 - (ii) a rule made by the division in accordance with this chapter; or
 - (c) include in a filing with the division a material statement of fact that the seller or seller's principal knew or should have known to be false, deceptive, inaccurate, or misleading.
- (5) A solicitation of sale or telephone solicitation is considered complete when made, regardless of whether the person receiving the solicitation agrees to the sale or to make a charitable donation.

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