

TELEMARKETING REQUIREMENTS

1998 GENERAL SESSION

STATE OF UTAH

Sponsor: Lowell A. Nelson

AN ACT RELATING TO COMMERCE AND TRADE; AMENDING REQUIREMENTS FOR TELEPHONE SOLICITATIONS; PROVIDING DEFINITIONS; MAKING IT UNLAWFUL FOR ANY TELEPHONE SOLICITING BUSINESS TO EMPLOY OR USE PRISONERS IN SOLICITATIONS IN CERTAIN CIRCUMSTANCES; AND MAKING TECHNICAL CORRECTIONS.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:

13-25a-102, as enacted by Chapter 26, Laws of Utah 1996

13-25a-103, as enacted by Chapter 26, Laws of Utah 1996

13-26-11, as enacted by Chapter 189, Laws of Utah 1994

Be it enacted by the Legislature of the state of Utah:

Section 1. Section **13-25a-102** is amended to read:

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, goods, or services.

(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 equipment used with a burglar alarm system, voice messaging system, fire alarm system, or other system used in an emergency involving the immediate health or safety of a person.

(3) "Established business relationship" means a relationship that:

(a) is based on inquiry, application, purchase, or transaction regarding products or services

offered;

(b) 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

(c) has not been terminated by either party.

(4) "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.

(5) "Negative response" means a statement from a party stating the party does not wish to listen to the sales presentation or participate in the solicitation presented in the telephone call.

~~[(5)]~~ (6) "Telephone solicitation" means~~[:-(a)]~~ the initiation of a telephone call or message for the purpose of:

(a) encouraging the purchase or rental of, or investment in, property, goods, or services; [or (b) the initiation of a telephone call or message for the purpose of]

(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; or

(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.

(7) "Telephone solicitor" means any natural person, 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.

(8) "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; or

(c) to any person with whom the telephone solicitor has an existing business relationship.

Section 2. Section **13-25a-103** is amended to read:

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 before 8:00 a.m. or after 9:00 p.m. local time unless prior express consent is given to call at a different time.

(4) A person may not make or authorize a telephone solicitation in violation of Title 47 U.S.C. 227.

~~[(5) Where a caller identification service is available, a telephone solicitor may not block the reception of its telephone number to a called party's telephone line.]~~

(5) Any telephone solicitor who makes an unsolicited telephone call to a telephone number shall:

(a) identify themselves;

(b) identify the business on whose behalf the person is soliciting;

(c) identify the purpose of the call promptly 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) A 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 and when the telephone solicitor's service or equipment is capable of allowing the display of the number.

Section 3. Section **13-26-11** is amended to read:

13-26-11. Prohibited practices.

(1) It is unlawful for any solicitor:

(a) to solicit prospective purchasers on behalf of a telephone soliciting business that is not registered with the division or exempt from registration under this chapter;

(b) to use a fictitious personal name in connection with a telephone solicitation;

(c) to make or cause to be made any untrue material statement, or fail to disclose a material fact necessary to make any statement made not misleading, whether in connection with a telephone solicitation or a filing with the division;

(d) to make or authorize the making of any misrepresentation about its compliance with this chapter to any prospective or actual purchaser; or

(e) to fail to refund within 30 days any amount due a purchaser who exercises the right to cancel under Section 13-26-5.

(2) It is unlawful for any telephone soliciting business:

(a) to cause or permit any solicitor to violate any provision of this chapter; or

(b) to use inmates in telephone soliciting operations where inmates have access to personal data about an individual sufficient to physically locate or contact that individual, such as names, addresses, telephone numbers, Social Security numbers, credit card information, or physical descriptions.