

CONSUMER PROTECTION AMENDMENTS

1999 GENERAL SESSION

STATE OF UTAH

Sponsor: Afton B. Bradshaw

AN ACT RELATING TO COMMERCE AND TRADE; MODIFYING ANNUAL REGISTRATION FEE REQUIREMENTS FOR CREDIT SERVICE ORGANIZATIONS AND TELEPHONE SOLICITING BUSINESS; MODIFYING BOND REQUIREMENTS FOR PERSONAL INTRODUCTION SERVICES; AND PROVIDING AN EFFECTIVE DATE.

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

AMENDS:

13-21-3, as last amended by Chapter 186, Laws of Utah 1994

13-26-3, as last amended by Chapters 189 and 313, Laws of Utah 1994

13-30-106, as enacted by Chapter 150, Laws of Utah 1998

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

Section 1. Section **13-21-3** is amended to read:

13-21-3. Credit services organizations -- Prohibitions.

(1) A credit services organization, its salespersons, agents, and representatives, and independent contractors who sell or attempt to sell the services of a credit services organization may not do any of the following:

(a) conduct any business regulated by this chapter without first:

(i) securing a certificate of registration from the division; and

(ii) unless exempted under Section 13-21-4, posting a bond, letter of credit, or certificate of deposit with the division in the amount of \$100,000;

(b) make a false statement, or fail to state a material fact, in connection with an application for registration with the division;

(c) charge or receive any money or other valuable consideration prior to full and complete performance of the services the credit services organization has agreed to perform for the buyer unless the credit services organization meets the requirements of Subsection (1)(a)(ii);

(d) dispute or challenge, or assist a person in disputing or challenging an entry in a credit

report prepared by a consumer reporting agency without a factual basis for believing and obtaining a written statement for each entry from the person stating that that person believes that the entry contains a material error or omission, outdated information, inaccurate information, or unverifiable information;

(e) charge or receive any money or other valuable consideration solely for referral of the buyer to a retail seller who will or may extend credit to the buyer, if the credit that is or will be extended to the buyer is upon substantially the same terms as those available to the general public;

(f) make, or counsel or advise any buyer to make, any statement that is untrue or misleading and that is known, or that by the exercise of reasonable care should be known, to be untrue or misleading, to a credit reporting agency or to any person who has extended credit to a buyer or to whom a buyer is applying for an extension of credit, with respect to a buyer's creditworthiness, credit standing, or credit capacity;

(g) make or use any untrue or misleading representations in the offer or sale of the services of a credit services organization or engage, directly or indirectly, in any act, practice, or course of business that operates or would operate as fraud or deception upon any person in connection with the offer or sale of the services of a credit services organization; and

(h) transact any business as a credit services organization, as defined in Section 13-21-2, without first having registered with the division by paying an annual fee [of \$50] set pursuant to Section 63-38-3.2 and filing proof that it has obtained a bond or letter of credit as required by Subsection (1).

(2) (a) A bond, letter of credit from a Utah depository, or certificate of deposit posted with the division shall be used to cover the losses of any person arising from a violation of this chapter by the posting credit services organization. A bond, letter of credit, or certificate of deposit may also be used to satisfy administrative fines and civil damages arising from any enforcement action against the posting credit service organization.

(b) A bond, letter of credit, or certificate of deposit shall remain in force:

(i) until replaced by a bond, letter of credit, or certificate of deposit of identical or superior coverage; or

(ii) for one year after the credit servicing organization notifies the division in writing that it has ceased all activities regulated by this chapter.

Section 2. Section **13-26-3** is amended to read:

13-26-3. Registration and bond required.

(1) (a) Each telephone soliciting business engaging in telephone solicitation or sales in this state shall register annually with the Division of Consumer Protection prior to doing or continuing to do business in this state.

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

(c) If a telephone soliciting business fails to designate an agent to receive service or fails to appoint a successor to the agent, the business' application for an initial or renewal registration shall be denied, and any current registration shall be suspended until an agent is designated.

(2) The division may impose [a] an annual registration fee [~~of up to \$50~~] set pursuant to Section 63-38-3.2.

(3) (a) Each telephone soliciting business 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 to do business in this state; or

(iii) a certificate of deposit held in this state in a depository institution regulated by the Department of Financial Institutions.

(b) The 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 any telephone solicitation or sales violation of this chapter.

(c) The division may recover from the bond, letter of credit, or certificate of deposit investigative costs, attorneys' fees, and other costs of collecting and distributing funds under this section and the costs of promoting consumer education, but only if the consumer has first recovered

full damages.

(d) A telephone soliciting business shall keep a bond, certificate of deposit, or letter of credit in force for one year after it notifies the division in writing that it has ceased all activities regulated by this chapter.

(e) The amount to be posted in the form of a bond, irrevocable letter of credit, or certificate of deposit shall be determined as follows:

(i) if neither the telephone soliciting business nor any person affiliated with the telephone soliciting business at the time of application has been found in an administrative, civil, or criminal proceeding within three years of the application to have violated this chapter, the amount posted shall be \$50,000;

(ii) if the telephone soliciting business or any currently affiliated person has violated this chapter within three years preceding application, the amount posted shall be \$75,000; and

(iii) for purposes of Subsection (3)(e) an "affiliated person" means a contractor, director, employee, officer, owner, or partner of the telephone soliciting business.

(4) The division may establish by rule the registration requirements for telephone soliciting businesses under the terms of Title 63, Chapter 46a, Utah Administrative Rulemaking Act. An administrative proceeding conducted by the division under this chapter shall comply with the requirements of Title 63, Chapter 46b, Administrative Procedures Act.

(5) The division director may revoke a registration under this section for any violation of this chapter.

Section 3. Section **13-30-106** is amended to read:

13-30-106. Bond, certificate of deposit, or letter of credit.

(1) (a) A person may not conduct a personal introduction service unless at the time of conducting the personal introduction service the person has on file with the division a good and sufficient bond, certificate of deposit, or letter of credit.

(b) If a personal introduction service business obtains and maintains a bond, the bond shall be a performance bond issued by a surety authorized to transact surety business in this state.

(2) The bond, certificate of deposit, or letter of credit shall be for [~~at a minimum \$50,000~~

or a higher] an amount prescribed by rule, payable to the division.

(3) (a) The bond, certificate of deposit, or letter of credit shall provide that the person giving it shall, upon written demand, remit to the division the amount necessary:

- (i) as reimbursement for both administrative and civil violations of this chapter; and
- (ii) in satisfaction of any civil and or criminal judgments rendered by a court of competent jurisdiction for violations of this chapter.

(b) Notwithstanding Subsection (3)(a), recovery from a bond, certificate of deposit, or letter of credit is limited to the amount of the bond, certificate of deposit, or letter of credit.

(4) The division may:

- (a) specify the form of the bond, certificate of deposit, or letter of credit; and
- (b) require that the bond, certificate of deposit, or letter of credit contain additional provisions and conditions that the division considers necessary or proper to protect the persons for whom the collection is undertaken.

(5) (a) A bond, certificate of deposit, or letter of credit required under this section shall be for the term of one year from the date of issuance and shall run concurrently with the registration.

(b) The applicant shall maintain the bond, certificate of deposit, or letter of credit for the entire duration of the registration and for a period of not less than one year after the division receives notice in writing from the person engaged in the business of a personal introduction service that all activities have ceased.

(c) An action on a bond, certificate of deposit, or letter of credit may not be initiated more than two years from the date the bond, certificate of deposit, or letter of credit expires.

Section 4. **Effective date.**

If approved by two-thirds of all the members elected to each house, this act takes effect upon approval by the governor, or the day following the constitutional time limit of Utah Constitution Article VII, Section 8, without the governor's signature, or in the case of a veto, the date of veto override.