

1 **CONSUMER PROTECTION AMENDMENTS**

2 2002 GENERAL SESSION

3 STATE OF UTAH

4 **Sponsor: Afton B. Bradshaw**

5 **This act amends the Commerce and Trade Code and the Utah Criminal Code. The act**
6 **amends the definition of "unsolicited telephone call." The act adjusts the bonding**
7 **requirements for those making telephone solicitations. The act amends the right of rescision**
8 **of a person making a purchase from a telephone soliciting business. The act amends the**
9 **provision for investigations of identity theft violations. The act makes technical changes.**

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

11 AMENDS:

12 **13-25a-102**, as last amended by Chapter 77, Laws of Utah 1998

13 **13-26-3**, as last amended by Chapter 124, Laws of Utah 1999

14 **13-26-4**, as last amended by Chapter 170, Laws of Utah 1996

15 **13-26-5**, as last amended by Chapter 189, Laws of Utah 1994

16 **76-6-1102**, as enacted by Chapter 57, Laws of Utah 2000

17 **76-6-1103**, as enacted by Chapter 57, Laws of Utah 2000

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

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

20 **13-25a-102. Definitions.**

21 As used in this chapter:

22 (1) "Advertisement" means material offering for sale, or advertising the availability or
23 quality of, any property, goods, or services.

24 (2) (a) "Automated telephone dialing system" means equipment used to:

25 (i) store or produce telephone numbers;

26 (ii) call a stored or produced number; and

27 (iii) connect the number called with a recorded message or artificial voice.



28 (b) "Automated telephone dialing system" does not include equipment used with a burglar
29 alarm system, voice messaging system, fire alarm system, or other system used in an emergency
30 involving the immediate health or safety of a person.

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

32 (a) is based on inquiry, application, purchase, or transaction regarding products or services
33 offered;

34 (b) is formed by a voluntary two-way communication between a person making a
35 telephone solicitation and a person to whom a telephone solicitation is made; and

36 (c) has not been terminated by either party.

37 (4) "Facsimile machine" means equipment used for:

38 (a) scanning or encoding text or images for conversion into electronic signals for
39 transmission; or

40 (b) receiving electronic signals and reproducing them as a duplicate of the original text or
41 image.

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

44 (6) "Telephone solicitation" means the initiation of a telephone call or message for the
45 purpose of:

46 (a) encouraging the purchase or rental of, or investment in, property, goods, or services;

47 (b) soliciting a sale of or extension of credit for property or services to the person called;

48 (c) soliciting information that will be used for:

49 (i) the direct solicitation of a sale of property or services to the person called; or

50 (ii) an extension of credit to the person called for a sale of property or services; or

51 (d) soliciting a charitable donation involving the exchange of any premium, prize, gift,
52 ticket, subscription, or other benefit in connection with any appeal made for a charitable purpose.

53 (7) "Telephone solicitor" means any natural person, firm, organization, partnership,
54 association, or corporation who makes or causes to be made an unsolicited telephone call,
55 including calls made by use of an automated telephone dialing system.

56 (8) "Unsolicited telephone call" means a telephone call for a commercial purpose or to
57 seek a financial donation other than a call made:

58 (a) in response to an express request of the person called;

59 (b) primarily in connection with an existing debt or contract, payment or performance of
60 which has not been completed at the time of the call; or

61 (c) to any person with whom the telephone solicitor has an [~~existing~~] established business
62 relationship.

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

64 **13-26-3. Registration and bond required.**

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

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

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

74 (2) The division may impose an annual registration fee set pursuant to Section 63-38-3.2.

75 (3) (a) Each telephone soliciting business engaging in telephone solicitation or sales in this
76 state shall obtain and maintain the following security:

77 (i) a performance bond issued by a surety authorized to transact surety business in this
78 state;

79 (ii) an irrevocable letter of credit issued by a financial institution authorized to do business
80 in this state; or

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

83 (b) The bond, letter of credit, or certificate of deposit shall be payable to the division for
84 the benefit of any consumer who incurs damages as the result of any telephone solicitation or sales
85 violation of this chapter.

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

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

93 (e) The amount to be posted in the form of a bond, irrevocable letter of credit, or certificate
94 of deposit shall be ~~[determined as follows]~~ set by the director of the division at a reasonable level
95 in relation to the individual circumstances of the telephone soliciting business and shall not
96 exceed:

97 (i) \$50,000 if neither the telephone soliciting business nor any affiliated person ~~[affiliated~~
98 ~~with the telephone soliciting business at the time of application has been found in an~~
99 ~~administrative, civil, or criminal proceeding]~~ has violated this chapter within three years ~~[of]~~
100 preceding the date of the application ~~[to have violated this chapter, the amount posted shall be~~
101 \$50,000]; or

102 (ii) \$75,000 if the telephone soliciting business or any ~~[currently]~~ affiliated person has
103 violated this chapter within three years preceding the date of the application ~~[, the amount posted~~
104 ~~shall be \$75,000; and]~~.

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

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

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

113 Section 3. Section **13-26-4** is amended to read:

114 **13-26-4. Exemptions from registration.**

115 (1) In any enforcement action initiated by the division, the person claiming an exemption
116 has the burden of proving that the person is entitled to the exemption.

117 (2) The following are exempt from the requirements of this chapter except for the
118 requirements of Sections 13-26-5, 13-26-8, and 13-26-11:

119 (a) a broker, agent, dealer, or sales professional licensed under the licensure laws of this
120 state, when soliciting sales within the scope of his license;

- 121 (b) the solicitation of sales by:
- 122 (i) a public utility that is regulated under Title 54 or by an affiliate of the utility;
- 123 (ii) a newspaper of general circulation;
- 124 (iii) a solicitation of sales made by a broadcaster licensed by any state or federal authority;
- 125 (iv) a nonprofit organization if no part of the net earnings from the sale inures to the
- 126 benefit of any member, officer, trustee, or serving board member of the organization, or
- 127 individual, or family member of an individual, holding a position of authority or trust in the
- 128 organization; and
- 129 (v) a person who periodically publishes and delivers a catalog of the solicitor's
- 130 merchandise to prospective purchasers, if the catalog:
- 131 (A) contains the price and a written description or illustration of each item offered for sale;
- 132 (B) includes the business address of the solicitor;
- 133 (C) includes at least 24 pages of written material and illustrations;
- 134 (D) is distributed in more than one state; and
- 135 (E) has an annual circulation by mailing of not less than 250,000;
- 136 (c) any ~~publicly-traded~~ publicly traded corporation registered with the Securities and
- 137 Exchange Commission, or any subsidiary of the corporation;
- 138 (d) the solicitation of any depository institution, as defined in Section 7-1-103, a subsidiary
- 139 of a depository institution, personal property broker, securities broker, investment adviser,
- 140 consumer finance lender, or insurer subject to regulation by an official agency of this state or the
- 141 United States;
- 142 (e) the solicitation by a person soliciting only the sale of telephone services to be provided
- 143 by the person or the person's employer;
- 144 (f) the solicitation of a person relating to a transaction regulated by the Commodities
- 145 Futures Trading Commission, if:
- 146 (i) the person is registered with or temporarily licensed by the commission to conduct that
- 147 activity under the Commodity Exchange Act; and
- 148 (ii) the registration or license has not expired or been suspended or revoked;
- 149 (g) the solicitation of a contract for the maintenance or repair of goods previously
- 150 purchased from the person:
- 151 (i) who is making the solicitation; or

- 152 (ii) on whose behalf the solicitation is made;
- 153 (h) the solicitation of previous customers of the business on whose behalf the call is made
- 154 if the person making the call:
 - 155 (i) does not offer any premium in conjunction with a sale or offer;
 - 156 (ii) is not selling an investment or an opportunity for an investment that is not registered
 - 157 with any state or federal authority; and
 - 158 (iii) is not regularly engaged in telephone sales;
- 159 (i) the solicitation of a sale that is an isolated transaction and not done in the course of a
- 160 pattern of repeated transactions of a like nature;
- 161 (j) the solicitation of a person by a retail business establishment that has been in operation
- 162 for at least five years in Utah under the same name as that used in connection with telemarketing
- 163 if both of the following occur on a continuing basis:
 - 164 (i) products are displayed and offered for sale at the place of business, or services are
 - 165 offered for sale and provided at the place of business; and
 - 166 (ii) a majority of the seller's business involves the buyer obtaining the products or services
 - 167 at the seller's place of business;
- 168 (k) a person primarily soliciting the sale of a magazine or periodical sold by the publisher
- 169 or the publisher's agent through a written agreement, or printed or recorded material through a
- 170 contractual plan, such as a book or record club, continuity plan, subscription, standing order
- 171 arrangement, or supplement or series arrangement if:
 - 172 (i) the seller provides the consumer with a form that the consumer may use to instruct the
 - 173 seller not to ship the offered merchandise, and the arrangement is regulated by the Federal Trade
 - 174 Commission trade regulation concerning use of negative option plans by sellers in commerce; or
 - 175 (ii) (A) the seller periodically ships merchandise to a consumer who has consented in
 - 176 advance to receive the merchandise on a periodic basis; and
 - 177 (B) the consumer retains the right to cancel at any time and receive a full refund for the
 - 178 unused portion; or
- 179 (l) a telephone marketing service company that provides telemarketing sales services under
- 180 contract to sellers if:
 - 181 (i) it has been doing business regularly with customers in Utah for at least five years under
 - 182 the same business name and with its principal office in the same location;

183 (ii) at least 75% of its contracts are performed on behalf of persons exempted from
184 registration under this chapter; and

185 (iii) neither the company nor its principals have been enjoined from doing business or
186 subjected to criminal actions for their business activities in this or any other state.

187 Section 4. Section **13-26-5** is amended to read:

188 **13-26-5. Right of rescission -- Cancellation.**

189 (1) (a) Except as provided in Subsections (1)(b) and (c), in addition to any right to
190 otherwise revoke an offer, a person making a purchase from a telephone soliciting business,
191 whether required to be registered under this chapter or exempt from registration, may cancel the
192 sale at any time up to midnight of the third business day after the receipt of the merchandise or
193 premium, whichever is later, provided the solicitor advises the purchaser of [~~his~~] the purchaser's
194 cancellation rights under this chapter at the time any solicitation is made.

195 (b) If the solicitor [~~required to be registered under this chapter~~] fails to orally advise a
196 purchaser of the right to cancel under this section at the time of any solicitation, the purchaser's
197 right to cancel shall be extended to 90 days.

198 (c) If the solicitor [~~required to be registered under this chapter~~] fails to orally advise a
199 purchaser of [~~his~~] the solicitor's true name, telephone number, and complete street address at the
200 time of any solicitation, the purchaser may cancel the sale at any time.

201 (2) Sales shall be cancelled by mailing a notice of cancellation to the telephone solicitor's
202 correct street address, postage prepaid. If the telephone solicitor provided no correct street address,
203 cancellation can be accomplished by sending a notice of cancellation to the division's offices,
204 postage prepaid.

205 (3) (a) If a cancellation involves durable goods, as defined by rule, those goods shall be
206 returned to the seller.

207 (b) If expendable goods are involved, the purchaser shall return any unused portion of
208 those goods.

209 (c) A reasonable attempt shall be made to return goods to the solicitor's correct street
210 address within seven days of exercising the right to cancel, providing the solicitor has provided
211 the purchaser with the address. If the solicitor has failed to give a correct address, no return is
212 required to qualify for a full refund of the purchase price.

213 (d) If the purchaser has used any portion of the services or goods purchased, the solicitor

214 or telephone soliciting business shall receive a reasonable allowance for value given. This
215 allowance may be deducted from any refund due the purchaser.

216 (e) A solicitor shall be jointly and severally liable with the telephone soliciting business
217 for any refund amount due following the cancellation of a sale made by the solicitor.

218 (4) For the purposes of this section, "business day" does not include Sunday or a federal
219 or state holiday.

220 Section 5. Section **76-6-1102** is amended to read:

221 **76-6-1102. Identity fraud crime.**

222 (1) For purposes of this part, "personal identifying information" may include:

223 (a) name;

224 (b) address;

225 (c) telephone number;

226 (d) driver's license number;

227 (e) Social Security number;

228 (f) place of employment;

229 (g) employee identification numbers or other personal identification numbers;

230 (h) mother's maiden name;

231 (i) electronic identification numbers;

232 (j) digital signatures or a private key; or

233 (k) any other numbers or information that can be used to access a person's financial

234 resources or medical information in the name of another person without the consent of that person
235 except for numbers or information that can be prosecuted as financial transaction card offenses
236 under Sections 76-6-506 through 76-6-506.4.

237 (2) A person is guilty of identity fraud when that person knowingly or intentionally:

238 (a) obtains personal identifying information of another person without the authorization
239 of that person; and

240 (b) uses, or attempts to use, that information with fraudulent intent, including to obtain,
241 or attempt to obtain, credit, goods, services, any other thing of value, or medical information in the
242 name of another person without the consent of that person.

243 (3) Identity fraud is:

244 (a) a class B misdemeanor if the value of the credit, goods, services, or any other thing of

245 value is less than \$300;

246 (b) a class A misdemeanor if:

247 (i) a value cannot be determined and the personal identifying information has been used

248 without the consent of that person to obtain medical information [~~in the name of another person~~

249 ~~without the consent of that person~~] or to obtain employment; or

250 (ii) the value of the credit, goods, services, or any other thing of value is or exceeds \$300

251 but is less than \$1,000;

252 (c) a third degree felony if the value of the credit, goods, services, or any other thing of

253 value is or exceeds \$1,000 but is less than \$5,000; or

254 (d) a second degree felony if the value of the credit, goods, services, or any other thing of

255 value is or exceeds \$5,000.

256 (4) Multiple violations within a 90-day period may be aggregated into a single offense, and

257 the degree of the offense is determined by the total value of all credit, goods, services, or any other

258 thing of value used, or attempted to be used, through the multiple violations.

259 Section 6. Section **76-6-1103** is amended to read:

260 **76-6-1103. Investigation, jurisdiction, and prima facie evidence of violation.**

261 (1) In any criminal proceeding brought pursuant to this section, the crime shall be

262 considered to have been committed in any county in which any part of the identity fraud took

263 place, regardless of whether the defendant was ever actually in that county.

264 (2) [~~The~~] In addition to investigations conducted by law enforcement agencies, the

265 Division of Consumer Protection also has responsibility for investigating violations of this part

266 where identity fraud is the primary violation that is alleged to have been committed.

267 (3) A criminal conviction under this part is prima facie evidence of a violation of Section

268 13-11-4, of the Utah Consumer Sales Practices Act.

269 (4) Any violation of this part constitutes a violation of Section 13-11-4, of the Utah

270 Consumer Sales Practices Act.

Legislative Review Note

as of 10-22-01 2:42 PM

A limited legal review of this legislation raises no obvious constitutional or statutory concerns.

Office of Legislative Research and General Counsel