

1                                   **COMMERCE AND TRADE - TELEPHONE AND**  
2                                   **FACSIMILE SOLICITATION ACT**

3                                   2003 GENERAL SESSION

4                                   STATE OF UTAH

5                                   **Sponsor: David L. Thomas**

6 **This act modifies the Telephone and Facsimile Solicitation Act to provide definitions and**  
7 **modify some of the guidelines and enforcement mechanisms for telephone and facsimile**  
8 **solicitations. The act enacts provisions providing guidelines for the maintenance of a**  
9 **no-call database by the Division of Consumer Protection.**

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

11 AMENDS:

12           **13-25a-102**, as last amended by Chapter 122, Laws of Utah 2002

13           **13-25a-103**, as last amended by Chapter 77, Laws of Utah 1998

14           **13-25a-104**, as enacted by Chapter 26, Laws of Utah 1996

15           **13-25a-106**, as enacted by Chapter 26, Laws of Utah 1996

16           **13-25a-107**, as enacted by Chapter 26, Laws of Utah 1996

17 ENACTS:

18           **13-25a-108**, Utah Code Annotated 1953

19           **13-25a-109**, Utah Code Annotated 1953

20           **13-25a-110**, Utah Code Annotated 1953

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

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

23           **13-25a-102. Definitions.**

24           As used in this chapter:

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

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



- 28 (i) store or produce telephone numbers;
- 29 (ii) call a stored or produced number; and
- 30 (iii) connect the number called with a recorded message or artificial voice.
- 31 (b) "Automated telephone dialing system" does not include equipment used with a
- 32 burglar alarm system, voice messaging system, fire alarm system, or other system used in an
- 33 emergency involving the immediate health or safety of a person.

34 (3) "Division" means the Division of Consumer Protection in the Department of

35 Commerce.

36 [~~3~~] (4) "Established business relationship" means a relationship that:

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

38 services offered;

39 (b) is formed by a voluntary two-way communication between a person making a

40 telephone solicitation and a person to whom a telephone solicitation is made; and

41 (c) has not been terminated by [~~either party~~]:

42 (i) an act by either party; or

43 (ii) the passage of 180 days since the most recent inquiry, application, purchase,

44 transaction, or voluntary two-way communication.

45 [~~4~~] (5) "Facsimile machine" means equipment used for:

46 (a) scanning or encoding text or images for conversion into electronic signals for

47 transmission; or

48 (b) receiving electronic signals and reproducing them as a duplicate of the original text

49 or image.

50 [~~5~~] (6) "Negative response" means a statement from a party stating the party does not

51 wish to listen to the sales presentation or participate in the solicitation presented in the

52 telephone call.

53 [~~6~~] (7) "Telephone solicitation" means the initiation of a telephone call or message

54 for [~~the purpose of~~] a commercial purpose or to seek a financial donation, including calls:

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

56 regardless of whether the transaction involves a nonprofit organization;

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

58 called;

- 59 (c) soliciting information that will be used for:  
 60 (i) the direct solicitation of a sale of property or services to the person called; or  
 61 (ii) an extension of credit to the person called for a sale of property or services; or  
 62 (d) soliciting a charitable donation involving the exchange of any premium, prize, gift,  
 63 ticket, subscription, or other benefit in connection with any appeal made for a charitable  
 64 purpose.

65 ~~[(7)]~~ (8) "Telephone solicitor" means any natural person, firm, organization,  
 66 partnership, association, or corporation who makes or causes to be made an unsolicited  
 67 telephone call, including calls made by use of an automated telephone dialing system.

68 ~~[(8)]~~ (9) "Unsolicited telephone call" means a telephone call for a commercial purpose  
 69 or to seek a financial donation other than a call made:

- 70 (a) in response to an express request of the person called;  
 71 (b) primarily in connection with an existing debt or contract, payment or performance  
 72 of which has not been completed at the time of the call;  
 73 (c) to any person with whom the telephone solicitor has an established business  
 74 relationship; or  
 75 (d) as required by law for a medical purpose.

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

77 **13-25a-103. Prohibited conduct for telephone solicitations -- Exceptions.**

78 (1) Except as provided in Subsection (2), a person may not operate or authorize the  
 79 operation of an automated telephone dialing system to make a telephone solicitation.

80 (2) A person may operate an automated telephone dialing system if a call is made:

81 (a) with the prior express consent of the person who is called agreeing to receive a  
 82 telephone solicitation from a specific solicitor; or

83 (b) to a person with whom the solicitor has an established business relationship.

84 (3) A person may not make a telephone solicitation to a residential telephone ~~[before~~  
 85 ~~8:00 a.m. or after 9:00 p.m. local time unless prior express consent is given to call at a different~~  
 86 ~~time.]~~ without prior express consent during any of the following times:

87 (a) before 9 a.m. or after 8:30 p.m. local time;

88 (b) on a Sunday; or

89 (c) on a legal holiday.

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

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

94 (a) identify themselves;

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

96 (c) identify the purpose of the call promptly upon making contact by telephone with the  
97 person who is the object of the telephone solicitation;

98 (d) discontinue the solicitation if the person being solicited gives a negative response at  
99 any time during the telephone call; and

100 (e) hang up the phone, or in the case of an automated telephone dialing system  
101 operator, disconnect the automated telephone dialing system from the telephone line within 25  
102 seconds of the termination of the call by the person being called.

103 (6) A telephone solicitor may not withhold the display of the telephone solicitor's  
104 telephone number from a caller identification service when that number is being used for  
105 telemarketing purposes and when the telephone solicitor's service or equipment is capable of  
106 allowing the display of the number.

107 Section 3. Section **13-25a-104** is amended to read:

108 **13-25a-104. Prohibited conduct for facsimiles -- Exceptions.**

109 (1) Except as provided in Subsection (2), a person may not operate or authorize the  
110 operation of a facsimile machine to send an advertisement.

111 (2) A person may operate a facsimile machine if the advertisement is sent:

112 (a) with the prior express written consent of the person who receives the facsimile  
113 agreeing to receive the facsimile from a specific solicitor; or

114 (b) to a person with whom the solicitor has an established business relationship.

115 (3) A person may not make or authorize the sending of an advertisement by facsimile  
116 in violation of Title 47 U.S.C. 227.

117 Section 4. Section **13-25a-106** is amended to read:

118 **13-25a-106. Enforcement.**

119 (1) The division shall investigate and assess administrative fines for violations of this  
120 chapter.

121 (2) (a) Upon referral from the division, the attorney general or any district or county  
 122 attorney may:

123 ~~[(a)]~~ (i) bring an action for temporary or permanent injunctive or other relief in any  
 124 court of competent jurisdiction for any violation of this chapter. The court may, upon entry of  
 125 final judgment, award restitution when appropriate to any person suffering loss because of a  
 126 violation of this part if proof of loss is submitted to the satisfaction of the court;

127 ~~[(b)]~~ (ii) bring an action in any court of competent jurisdiction for the collection of  
 128 penalties authorized under Subsection 13-25a-105(1); or

129 ~~[(c)]~~ (iii) bring an action under Subsection 13-25a-105(3).

130 (b) In an action under Subsection (2)(a), the attorney general or any district or county  
 131 attorney may recover costs, including investigative costs and attorney fees, from any violator of  
 132 this chapter.

133 Section 5. Section **13-25a-107** is amended to read:

134 **13-25a-107. Private action.**

135 (1) In addition to any other remedies, a person may bring an action in any state court of  
 136 competent jurisdiction if ~~[that person has received a telephone solicitation or facsimile~~  
 137 ~~advertisement that]:~~

138 (a) (i) [violates this chapter;] the person has received two or more telephone  
 139 solicitations or facsimile advertisements from the same individual or entity that:

140 ~~[(b) causes the person to suffer a pecuniary loss as a result of a violation of this~~  
 141 ~~chapter; or]~~

142 (A) violates this chapter; or

143 ~~[(c)]~~ (B) violates Title 47 U.S.C. 227[-]; and

144 (ii) the person, following the first telephone solicitation or facsimile advertisement,  
 145 notified the sender of the person's objection to receiving the telephone solicitation or facsimile  
 146 advertisement; or

147 (b) the person has received one telephone solicitation or facsimile advertisement in  
 148 violation of:

149 (i) Subsection 13-25a-103(1);

150 (ii) Subsection 13-25a-103(3);

151 (iii) Subsection 13-25a-103(5);

152 (iv) Subsection 13-25a-103(6); or

153 (v) Subsection 13-25a-104(1).

154 (2) In a suit brought under Subsection (1), a person may:

155 (a) recover the greater of \$500 or the amount of the pecuniary loss, if any;

156 (b) recover court costs and reasonable attorneys' fees as determined by the court; and

157 (c) seek to enjoin any conduct in violation of this chapter.

158 Section 6. Section **13-25a-108** is enacted to read:

159 **13-25a-108. Objections to telephone solicitations.**

160 A person may not make or cause to be made a telephone solicitation to the telephone  
161 number contained in the no-call database established under Section 13-25a-109.

162 Section 7. Section **13-25a-109** is enacted to read:

163 **13-25a-109. No-call database.**

164 (1) The division shall establish and provide for the operation of a no-call database to  
165 compile a list of telephone numbers of persons who have provided notice to the division of the  
166 person's objection to receiving a telephone solicitation.

167 (2) A person that requests to have the person's telephone number included in the  
168 no-call database shall pay an annual registration fee determined by the division in accordance  
169 with Section 63-38-3.2.

170 (3) A person desiring to make telephone solicitations may obtain a copy of the no-call  
171 database maintained by the division under this section if the person pays an annual registration  
172 fee determined by the division in accordance with Section 63-38-3.2.

173 (4) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the  
174 division shall adopt rules to:

175 (a) establish the methods by which a person may give notice to the division, including  
176 notice by telephone, Internet, mail, or in-person communication, of:

177 (i) the person's objection to receiving a telephone solicitation; or

178 (ii) the person's lifting of the person's objection to receiving a telephone solicitation;

179 (b) specify the amount of time after a person provides notice to the division, not to  
180 exceed 15 calendar days, after which the inclusion of the person's telephone number in the  
181 no-call database shall be effective against a person making a telephone solicitation;

182 (c) establish the effect of a change of telephone number by a person whose telephone

183 number is contained in the no-call database;

184 (d) establish methods by which a person desiring to make telephone solicitations may  
185 obtain a copy of the no-call database;

186 (e) define the improper use of the no-call database;

187 (f) define penalties for the improper use of the no-call database; and

188 (g) define penalties against a person that registers another person to the no-call  
189 database without that person's consent.

190 (5) If any federal agency establishes a national database of telephone numbers of  
191 persons who object to receiving telephone solicitations, the division shall include Utah  
192 telephone numbers from the national database in the no-call database maintained under this  
193 section.

194 (6) Information contained in the no-call database maintained under this section shall be  
195 classified as private under Title 63, Chapter 2, Government Records Access and Management  
196 Act, and shall be used only for purposes of:

197 (a) compliance with this chapter; or

198 (b) a proceeding or action to enforce this chapter.

199 Section 8. Section **13-25a-110** is enacted to read:

200 **13-25a-110. Advisory group.**

201 (1) The division shall establish an advisory group to help persons understand their  
202 options with regard to telephone solicitations and facsimile advertisements composed of  
203 representatives from:

204 (a) government entities;

205 (b) telecommunications companies;

206 (c) businesses;

207 (d) consumer advocacy organizations; or

208 (e) the general public.

209 (2) The division may enter into agreements with telecommunications companies to  
210 disseminate information concerning the options available to persons under this chapter.

**Legislative Review Note**

**as of 2-4-03 10:19 AM**

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

**Office of Legislative Research and General Counsel**



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**Fiscal Note**  
**Bill Number SB0194**

**Commerce and Trade - Telephone and Facsimile  
Solicitation Act**

14-Feb-03  
1:48 PM

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**State Impact**

This bill will result in the generation of about \$200,000 to the Commerce Service Fund against increased expenses of about \$120,000 in FY 2004. In FY 2005, revenues stay at about \$200,000 while expenditures increase to \$148,500. Appropriations from and revenue generated to the Commerce Service Fund affect the amount available for transfer to the General Fund.

	<u>FY 04 Approp.</u>	<u>FY 05 Approp.</u>	<u>FY 04 Revenue</u>	<u>FY 05 Revenue</u>
Commerce Service Fund	\$120,000	\$148,500	\$200,000	\$200,000
<b>TOTAL</b>	<b>\$120,000</b>	<b>\$148,500</b>	<b>\$200,000</b>	<b>\$200,000</b>

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**Individual and Business Impact**

Individuals will pay a small fee to be put on a no-call list and telemarketers will pay quarterly for the lists.

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**Office of the Legislative Fiscal Analyst**