

Representative Sheryl L. Allen proposes the following substitute bill:

1 **CONSUMER PROTECTION AMENDMENTS**

2 2004 GENERAL SESSION

3 STATE OF UTAH

4 **Sponsor: Sheryl L. Allen**

5 Patricia W. Jones

6
7 **LONG TITLE**

8 **General Description:**

9 This bill modifies provisions of the Commerce and Trade Code dealing with the duties
10 of the Division of Consumer Protection.

11 **Highlighted Provisions:**

12 This bill:

- 13 ▶ modifies certain definitions;
- 14 ▶ deletes provisions that currently give the Division of Consumer Protection authority
15 to regulate the misuse of personal identifying information;
- 16 ▶ modifies provisions related to a deceptive act or practice by a supplier;
- 17 ▶ modifies certain administrative fines imposed for violations of the Utah Consumer
18 Sales Practices Act;
- 19 ▶ modifies the definition of a credit services organization for purposes of the Credit
20 Services Organizations Act;
- 21 ▶ modifies the Charitable Solicitations Act to:
 - 22 • change certain requirements for an application for registration to enable
23 electronic filing; and
 - 24 • exempt certain corporations from the act;
- 25 ▶ modifies the definitions of a telephone solicitation and a telephone solicitor for



26 purposes of the Telephone Fraud Prevention Act to be consistent with other statutes;
27 and

28 ▶ makes technical corrections.

29 **Monies Appropriated in this Bill:**

30 None

31 **Other Special Clauses:**

32 This bill provides an immediate effective date.

33 **Utah Code Sections Affected:**

34 AMENDS:

35 **13-11-3**, as last amended by Chapter 57, Laws of Utah 2000

36 **13-11-4**, as last amended by Chapter 196, Laws of Utah 2001

37 **13-11-17**, as last amended by Chapters 198 and 237, Laws of Utah 1995

38 **13-21-2**, as last amended by Chapter 83, Laws of Utah 1995

39 **13-22-6**, as last amended by Chapter 187, Laws of Utah 1996

40 **13-22-8**, as last amended by Chapter 210, Laws of Utah 2001

41 **13-26-2**, as last amended by Chapter 92, Laws of Utah 1997

42 REPEALS:

43 **13-11-4.5**, as enacted by Chapter 57, Laws of Utah 2000



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

46 Section 1. Section **13-11-3** is amended to read:

47 **13-11-3. Definitions.**

48 As used in this chapter:

49 (1) "Charitable solicitation" means any request directly or indirectly for money, credit,
50 property, financial assistance, or any other thing of value on the plea or representation that it
51 will be used for a charitable purpose. A charitable solicitation may be made in any manner,
52 including:

53 (a) any oral or written request, including a telephone request;

54 (b) the distribution, circulation, or posting of any handbill, written advertisement, or
55 publication; or

56 (c) the sale of, offer or attempt to sell, or request of donations for any book, card,

57 chance, coupon, device, magazine, membership, merchandise, subscription, ticket, flower, flag,
 58 button, sticker, ribbon, token, trinket, tag, souvenir, candy, or any other article in connection
 59 with which any appeal is made for any charitable purpose, or where the name of any charitable
 60 organization or movement is used or referred to as an inducement or reason for making any
 61 purchase donation, or where, in connection with any sale or donation, any statement is made
 62 that the whole or any part of the proceeds of any sale or donation will go to or be donated to
 63 any charitable purpose. A charitable solicitation is considered complete when made, whether
 64 or not the organization or person making the solicitation receives any contribution or makes
 65 any sale.

66 (2) (a) "Consumer transaction" means a sale, lease, assignment, award by chance, or
 67 other written or oral transfer or disposition of goods, services, or other property, both tangible
 68 and intangible (except securities and insurance)~~[-including the use or misuse of personal
 69 identifying information of any person in relation to a consumer transaction]~~ to, or apparently to,
 70 a person for:

71 (i) primarily personal, family, or household purposes~~[-];~~ or ~~[for]~~

72 (ii) purposes that relate to a business opportunity that requires ~~[both his]~~;

73 (A) expenditure of money or property ~~[and his]~~ by the person described in Subsection
 74 (2)(a); and

75 (B) the person described in Subsection (2)(a) to perform personal services on a
 76 continuing basis and in which [he] the person described in Subsection (2)(a) has not been
 77 previously engaged~~[-, or a solicitation or offer by a supplier].~~

78 (b) "Consumer transaction" includes:

79 (i) any of the following with respect ~~[to any of these transfers or dispositions. It~~
 80 includes any offer or solicitation, any agreement, any] to a transfer or disposition described in
 81 Subsection (2)(a):

82 (A) an offer;

83 (B) a solicitation;

84 (C) an agreement; or

85 (D) performance of an agreement ~~[with respect to any of these transfers or dispositions,~~
 86 and any]; or

87 (ii) a charitable solicitation ~~[as defined in this section].~~

88 (3) "Enforcing authority" means the Division of Consumer Protection.

89 (4) "Final judgment" means a judgment, including any supporting opinion, that
90 determines the rights of the parties and concerning which appellate remedies have been
91 exhausted or the time for appeal has expired.

92 (5) "Person" means an individual, corporation, government, governmental subdivision
93 or agency, business trust, estate, trust, partnership, association, cooperative, or any other legal
94 entity.

95 (6) "Supplier" means a seller, lessor, assignor, offeror, broker, or other person who
96 regularly solicits, engages in, or enforces consumer transactions, whether or not he deals
97 directly with the consumer.

98 Section 2. Section **13-11-4** is amended to read:

99 **13-11-4. Deceptive act or practice by supplier.**

100 (1) A deceptive act or practice by a supplier in connection with a consumer transaction
101 violates this chapter whether it occurs before, during, or after the transaction.

102 (2) Without limiting the scope of Subsection (1), a supplier commits a deceptive act or
103 practice if the supplier knowingly or intentionally:

104 (a) indicates that the subject of a consumer transaction has sponsorship, approval,
105 performance characteristics, accessories, uses, or benefits, if it has not;

106 (b) indicates that the subject of a consumer transaction is of a particular standard,
107 quality, grade, style, or model, if it is not;

108 (c) indicates that the subject of a consumer transaction is new, or unused, if it is not, or
109 has been used to an extent that is materially different from the fact;

110 (d) indicates that the subject of a consumer transaction is available to the consumer for
111 a reason that does not exist;

112 (e) indicates that the subject of a consumer transaction has been supplied in accordance
113 with a previous representation, if it has not;

114 (f) indicates that the subject of a consumer transaction will be supplied in greater
115 quantity than the supplier intends;

116 (g) indicates that replacement or repair is needed, if it is not;

117 (h) indicates that a specific price advantage exists, if it does not;

118 (i) indicates that the supplier has a sponsorship, approval, or affiliation the supplier

119 does not have;

120 (j) indicates that a consumer transaction involves or does not involve a warranty, a
121 disclaimer of warranties, particular warranty terms, or other rights, remedies, or obligations, if
122 the representation is false;

123 (k) indicates that the consumer will receive a rebate, discount, or other benefit as an
124 inducement for entering into a consumer transaction in return for giving the supplier the names
125 of prospective consumers or otherwise helping the supplier to enter into other consumer
126 transactions, if receipt of the benefit is contingent on an event occurring after the consumer
127 enters into the transaction;

128 (l) after receipt of payment for goods or services, fails to ship the goods or furnish the
129 services within the time advertised or otherwise represented or, if no specific time is advertised
130 or represented, fails to ship the goods or furnish the services within 30 days, unless within the
131 applicable time period the supplier provides the buyer with the option to either cancel the sales
132 agreement and receive a refund of all previous payments to the supplier or to extend the
133 shipping date to a specific date proposed by the supplier, but any refund shall be mailed or
134 delivered to the buyer within ten business days after the seller receives written notification
135 from the buyer of the buyer's right to cancel the sales agreement and receive the refund;

136 (m) fails to furnish a notice of the purchaser's right to cancel a direct solicitation sale
137 within three business days of the time of purchase if the sale is made other than at the supplier's
138 established place of business pursuant to the supplier's personal contact, whether through mail,
139 electronic mail, facsimile transmission, telephone, or any other form of direct solicitation and if
140 the sale price exceeds \$25, unless the supplier's cancellation policy is communicated to the
141 buyer and the policy offers greater rights to the buyer than this Subsection (2)(m), which notice
142 shall be a conspicuous statement written in dark bold at least 12 point type, on the first page of
143 the purchase documentation, and shall read as follows: "YOU, THE BUYER, MAY CANCEL
144 THIS CONTRACT AT ANY TIME PRIOR TO MIDNIGHT OF THE THIRD BUSINESS
145 DAY (or time period reflecting the supplier's cancellation policy but not less than three
146 business days) AFTER THE DATE OF THE TRANSACTION OR RECEIPT OF THE
147 PRODUCT, WHICHEVER IS LATER.";

148 (n) promotes, offers, or grants participation in a pyramid scheme as defined under Title
149 76, Chapter 6a, Pyramid Scheme Act;

150 (o) represents that the funds or property conveyed in response to a charitable
151 solicitation will be donated or used for a particular purpose or will be donated to or used by a
152 particular organization, if the representation is false;

153 (p) if a consumer indicates his intention of making a claim for a motor vehicle repair
154 against his motor vehicle insurance policy:

155 (i) commences the repair without first giving the consumer oral and written notice of:

156 (A) the total estimated cost of the repair; and

157 (B) the total dollar amount the consumer is responsible to pay for the repair, which
158 dollar amount may not exceed the applicable deductible or other copay arrangement in the
159 consumer's insurance policy; or

160 (ii) requests or collects from a consumer an amount that exceeds the dollar amount a
161 consumer was initially told he was responsible to pay as an insurance deductible or other copay
162 arrangement for a motor vehicle repair under Subsection (2)(p)(i), even if that amount is less
163 than the full amount the motor vehicle insurance policy requires the insured to pay as a
164 deductible or other copay arrangement, unless:

165 (A) the consumer's insurance company denies that coverage exists for the repair, in
166 which case, the full amount of the repair may be charged and collected from the consumer; or

167 (B) the consumer misstates, before the repair is commenced, the amount of money the
168 insurance policy requires the consumer to pay as a deductible or other copay arrangement, in
169 which case, the supplier may charge and collect from the consumer an amount that does not
170 exceed the amount the insurance policy requires the consumer to pay as a deductible or other
171 copay arrangement;

172 (q) includes in any contract, receipt, or other written documentation of a consumer
173 transaction, or any addendum to any contract, receipt, or other written documentation of a
174 consumer transaction, any confession of judgment or any waiver of any of the rights to which a
175 consumer is entitled under this chapter; [or]

176 (r) charges a consumer for a consumer transaction that has not previously been agreed
177 to by the consumer[-]; or

178 ~~h [(s) promotes or offers a consumer transaction, or induces a person to enter into a~~
179 ~~consumer transaction, under circumstances which a reasonable person should know would~~
180 ~~constitute exploitation of a vulnerable adult as defined under:] h~~

181 ~~h~~ (i) Section 76-5-111; or
 182 ~~(ii) Title 62A, Chapter 3, Part 3, Abuse, Neglect, or Exploitation of Vulnerable Adults.]~~
 182a (s) SOLICITS OR ENTERS INTO A CONSUMER TRANSACTION WITH A PERSON WHO LACKS
 182b THE MENTAL ABILITY TO COMPREHEND THE NATURE AND CONSEQUENCES OF:
 182c (i) THE CONSUMER TRANSACTION; OR
 182d (ii) THE PERSON'S ABILITY TO BENEFIT FROM THE CONSUMER TRANSACTION. h

183 Section 3. Section **13-11-17** is amended to read:

184 **13-11-17. Actions by enforcing authority.**

185 (1) The enforcing authority may bring an action:

186 (a) to obtain a declaratory judgment that an act or practice violates this chapter;

187 (b) to enjoin, in accordance with the principles of equity, a supplier who has violated,
 188 is violating, or is otherwise likely to violate this chapter; and

189 (c) to recover, for each violation, actual damages, or obtain relief under Subsection
 190 (2)(b), on behalf of consumers who complained to the enforcing authority within a reasonable
 191 time after it instituted proceedings under this chapter.

192 (2) (a) The enforcing authority may bring a class action on behalf of consumers for the
 193 actual damages caused by an act or practice specified as violating this chapter in a rule adopted
 194 by the enforcing authority under Subsection 13-11-8(2) before the consumer transactions on
 195 which the action is based, or declared to violate Section 13-11-4 or 13-11-5 by final judgment
 196 of courts of general jurisdiction and appellate courts of this state that was either reported
 197 officially or made available for public dissemination under Subsection 13-11-7(1)(c) by the
 198 enforcing authority ten days before the consumer transactions on which the action is based, or,
 199 with respect to a supplier who agreed to it, was prohibited specifically by the terms of a consent
 200 judgment that became final before the consumer transactions on which the action is based.

201 (b) (i) On motion of the enforcing authority and without bond in an action under this
 202 Subsection (2), the court may make appropriate orders, including appointment of a master or
 203 receiver or sequestration of assets, but only if it appears that the defendant is threatening or is
 204 about to remove, conceal, or dispose of the defendant's property to the damage of persons for
 205 whom relief is requested. An appropriate order may include an order:

206 (A) to reimburse consumers found to have been damaged;

207 (B) to carry out a transaction in accordance with consumers' reasonable expectations;

208 (C) to strike or limit the application of unconscionable clauses of contracts to avoid an
 209 unconscionable result; or

210 (D) to grant other appropriate relief.

211 (ii) The court may assess the expenses of a master or receiver against a supplier.

212 (c) If an act or practice that violates this chapter unjustly enriches a supplier and
213 damages can be computed with reasonable certainty, damages recoverable on behalf of
214 consumers who cannot be located with due diligence shall be transferred to the state treasurer
215 pursuant to Title 67, Chapter 4a, Unclaimed Property Act.

216 (d) If a supplier shows by a preponderance of the evidence that a violation of this
217 chapter resulted from a bona fide error notwithstanding the maintenance of procedures
218 reasonably adapted to avoid the error, recovery under this Subsection (2) is limited to the
219 amount, if any, by which the supplier was unjustly enriched by the violation.

220 (e) An action may not be brought by the enforcing authority under this Subsection (2)
221 more than two years after the occurrence of a violation of this chapter.

222 (3) (a) The enforcing authority may terminate an investigation or an action other than a
223 class action upon acceptance of the supplier's written assurance of voluntary compliance with
224 this chapter. Acceptance of an assurance may be conditioned on a commitment to reimburse
225 consumers or take other appropriate corrective action.

226 (b) An assurance is not evidence of a prior violation of this chapter. Unless an
227 assurance has been rescinded by agreement of the parties or voided by a court for good cause,
228 subsequent failure to comply with the terms of an assurance is prima facie evidence of a
229 violation.

230 (4) (a) In addition to other penalties and remedies set out under this chapter, and in
231 addition to its other enforcement powers under Title 13, Chapter 2, Division of Consumer
232 Protection, the division director may issue a cease and desist order and impose an
233 administrative fine of up to [~~\$1,000~~] ~~h~~ \$5,000 \$2,500 ~~h~~ for each violation of this chapter.

234 (b) All money received through administrative fines imposed under this section shall
235 be deposited in the Consumer Protection Education and Training Fund created by Section
236 13-2-8.

237 Section 4. Section **13-21-2** is amended to read:

238 **13-21-2. Definitions -- Exemptions.**

239 As used in this chapter:

240 (1) "Buyer" means an individual who is solicited to purchase or who purchases the
241 services of a credit services organization.

242 (2) "Credit reporting agency" means a person that, for a monetary fee, dues, or on a

243 cooperative nonprofit basis, regularly engages in whole or in part in the practice of assembling
 244 or evaluating consumer credit information or other information on consumers for the purpose
 245 of furnishing consumer reports to third persons.

246 (3) (a) "Credit services organization" means a person who, with respect to the
 247 extension of credit by others, sells, provides, or performs, or represents that the person can or
 248 will sell, provide, or perform, in return for the payment of money or other valuable
 249 consideration any of the following services:

250 (i) improving a buyer's credit record, history, or rating;

251 (ii) obtaining an extension of credit for a buyer; [or]

252 (iii) providing advice, assistance, instruction, or instructional materials to a buyer with
 253 regard to either Subsection (3)(a)(i) or (ii)[-];

254 (iv) debt reduction or debt management plans;

255 (v) represent itself or its employee as a debt professional or credit counselor; or

256 (vi) negotiate with a buyer's creditor.

257 (b) "Credit services organization" does not include:

258 (i) a person authorized to make loans or extensions of credit under the laws of this state
 259 or the United States who is subject to regulation and supervision by this state or the United
 260 States and who derives at least 35% of the person's income from making loans and extensions
 261 of credit;

262 (ii) a depository institution **h** :

262a **(A) h** as defined in Section 7-1-103; **h** **OR**

262b **(B) THAT IS REGULATED OR SUPERVISED BY THE FEDERAL DEPOSITORY INSURANCE**
 262c **CORPORATION AND THE NATIONAL CREDIT UNION ASSOCIATION; h**

263 (iii) a person licensed as a real estate broker by this state if the person is acting within
 264 the course and scope of that license;

265 (iv) a person licensed to practice law in this state if the person renders services within
 266 the course and scope of the person's practice as an attorney;

267 (v) a broker-dealer registered with the Securities and Exchange Commission or the
 268 Commodity Futures Trading Commission if the broker-dealer is acting within the course and
 269 scope of that regulation; or

270 (vi) a credit reporting agency.

271 (4) "Extension of credit" means the right to defer payment of debt or to incur debt and
 272 defer its payment, offered or granted primarily for personal, family, or household purposes.

273 Section 5. Section **13-22-6** is amended to read:

274 **13-22-6. Application for registration.**

275 (1) An applicant for registration or renewal of registration as a charitable organization
276 shall:

277 (a) pay an application fee as determined under Section 63-38-3.2; and

278 (b) submit [~~a written~~] an application [~~, verified under oath,~~] on a form approved by the
279 division which shall include:

280 (i) the organization's name, address, telephone number, facsimile number, if any, and
281 the names and addresses of any organizations or persons controlled by, controlling, or affiliated
282 with the applicant;

283 (ii) the specific legal nature of the organization, that is, whether it is an individual, joint
284 venture, partnership, limited liability company, corporation, association, or other entity;

285 (iii) the names and residence addresses of the officers and directors of the organization;

286 (iv) the name and address of the registered agent for service of process and a consent to
287 service of process;

288 (v) the purpose of the solicitation and use of the contributions to be solicited;

289 (vi) the method by which the solicitation will be conducted and the projected length of
290 time it is to be conducted;

291 (vii) the anticipated expenses of the solicitation, including all commissions, costs of
292 collection, salaries, and any other items;

293 (viii) a statement of what percentage of the contributions collected as a result of the
294 solicitation are projected to remain available for application to the charitable purposes declared
295 in the application, including a satisfactory statement of the factual basis for the projected
296 percentage;

297 (ix) a statement of total contributions collected or received by the organization within
298 the calendar year immediately preceding the date of the application, including a description of
299 the expenditures made from or the use made of the contributions;

300 (x) a copy of any written agreements with any professional fund raiser involved with
301 the solicitation;

302 (xi) disclosure of any injunction, judgment, or administrative order or conviction of
303 any crime involving moral turpitude with respect to any officer, director, manager, operator, or
304 principal of the organization;

305 (xii) a copy of all agreements to which the applicant is, or proposes to be, a party
306 regarding the use of proceeds for the solicitation or fundraising;

307 (xiii) a statement of whether or not the charity, or its parent foundation, will be using
308 the services of a professional fund raiser or of a professional fund raising counsel or consultant;

309 (xiv) if either the charity or its parent foundation will be using the services of a
310 professional fund raiser or a professional fund raising counsel or consultant:

311 (A) a copy of all agreements related to the services; and

312 (B) an acknowledgment that fund raising in the state will not commence until both the
313 charitable organization, its parent foundation, if any, and the professional fund raiser or
314 professional fund raising counsel or consultant are registered and in compliance with this
315 chapter; and

316 (xv) any additional information the division may require by rule.

317 (2) If any information contained in the application for registration becomes incorrect or
318 incomplete, the applicant or registrant shall, within 30 days after the information becomes
319 incorrect or incomplete, correct the application or file the complete information required by the
320 division.

321 (3) In addition to the registration fee, an organization failing to file a registration
322 application or renewal by the due date or filing an incomplete registration application or
323 renewal shall pay an additional fee of \$25 for each month or part of a month after the date on
324 which the registration application or renewal were due to be filed.

325 Section 6. Section **13-22-8** is amended to read:

326 **13-22-8. Exemptions.**

327 (1) Section 13-22-5 does not apply to:

328 (a) a solicitation that an organization conducts among its own established and bona fide
329 membership exclusively through the voluntarily donated efforts of other members or officers of
330 the organization;

331 (b) a bona fide religious, ecclesiastical, or denominational organization if:

332 (i) the solicitation is made for a church, missionary, religious, or humanitarian purpose;

333 and

334 (ii) the organization is either:

335 (A) a lawfully organized corporation, institution, society, church, or established

336 physical place of worship, at which nonprofit religious services and activities are regularly
337 conducted and carried on;

338 (B) a bona fide religious group:

339 (I) that does not maintain specific places of worship;

340 (II) that is not subject to federal income tax; and

341 (III) not required to file an IRS Form 990 under any circumstance; or

342 (C) a separate group or corporation that is an integral part of an institution that is an
343 income tax exempt organization under 26 U.S.C. Sec. 501(c)(3) and is not primarily supported
344 by funds solicited outside its own membership or congregation;

345 (c) a solicitation by a broadcast media owned or operated by an educational institution
346 or governmental entity, or any entity organized solely for the support of that broadcast media;

347 (d) except as provided in Subsection 13-22-21(1), a solicitation for the relief of any
348 person sustaining a life-threatening illness or injury specified by name at the time of
349 solicitation if the entire amount collected without any deduction is turned over to the named
350 person;

351 (e) a political party authorized to transact its affairs within this state and any candidate
352 and campaign worker of the party if the content and manner of any solicitation make clear that
353 the solicitation is for the benefit of the political party or candidate;

354 (f) a political action committee or group soliciting funds relating to issues or candidates
355 on the ballot if the committee or group is required to file financial information with a federal or
356 state election commission;

357 (g) any school accredited by the state, any accredited institution of higher learning, or
358 club or parent, teacher, or student organization within and authorized by the school in support
359 of the operations or extracurricular activities of the school;

360 (h) a public or higher education foundation established under Title 53A or 53B;

361 (i) a television station, radio station, or newspaper of general circulation that donates
362 air time or print space for no consideration as part of a cooperative solicitation effort on behalf
363 of a charitable organization, whether or not that organization is required to register under this
364 chapter;

365 (j) a volunteer fire department, rescue squad, or local civil defense organization whose
366 financial oversight is under the control of a local governmental entity; [~~and~~]

- 367 (k) any governmental unit of any state or the United States[-]; and
368 (l) any corporation:
369 (i) established by an act of the United States Congress; and
370 (ii) that is required by federal law to submit an annual report:
371 (A) on the activities of the corporation, including an itemized report of all receipts and
372 expenditures of the corporation; and
373 (B) to the United States Secretary of Defense to be:
374 (I) audited; and
375 (II) submitted to the United States Congress.
376 (2) Any organization claiming an exemption under this section bears the burden of
377 proving its eligibility for, or the applicability of, the exemption claimed.
378 (3) Each organization exempt from registration pursuant to this section that makes a
379 material change in its legal status, officers, address, or similar changes shall file a report
380 informing the division of its current legal status, business address, business phone, officers, and
381 primary contact person within 30 days of the change.
382 (4) The division may by rule:
383 (a) require organizations exempt from registration pursuant to this section to file a
384 notice of claim of exemption;
385 (b) prescribe the contents of the notice of claim; and
386 (c) require a filing fee for the notice, as determined under Section 63-38-3.2.
387 Section 7. Section **13-26-2** is amended to read:
388 **13-26-2. Definitions.**
389 As used in this chapter, unless the context otherwise requires:
390 (1) "Continuity plan" means a shipment, with the prior express consent of the buyer, at
391 regular intervals of similar special-interest products. A continuity plan is distinguished from a
392 subscription arrangement by no binding commitment period or purchase amount.
393 (2) "Division" means the Division of Consumer Protection.
394 (3) "Fictitious personal name" means a name other than an individual's true name. An
395 "individual's true name" is the name taken at birth unless changed by operation of law or by
396 civil action.
397 (4) "Material statement" or "material fact" means information that a person of ordinary

398 intelligence or prudence would consider important in deciding whether or not to accept an offer
399 extended through a telephone solicitation.

400 (5) "Premium" means a gift, bonus, prize, award, certificate, or other document by
401 which a prospective purchaser is given a right, chance, or privilege to purchase or receive
402 goods or services with a stated or represented value of \$25 or more as an inducement to a
403 prospective purchaser to purchase other goods or services.

404 (6) "Subscription arrangements," "standing order arrangements," "supplements," and
405 "series arrangements" mean products or services provided, with the prior express request or
406 consent of the buyer, for a specified period of time at a price dependent on the duration of
407 service and to complement an initial purchase.

408 (7) (a) "Telephone solicitation," "sale," "selling," or "solicitation of sale" means:

409 (i) a sale or solicitation of goods or services in which:

410 ~~[(i)-(A)]~~ (A) (I) the seller solicits the sale over the telephone;

411 ~~[(B)]~~ (II) the purchaser's agreement to purchase is made over the telephone; and

412 ~~[(C)]~~ (III) the purchaser, over the telephone, pays for or agrees to commit to payment
413 for goods or services prior to or upon receipt by the purchaser of the goods or services;

414 ~~[(ii)]~~ (B) the solicitor, not exempt under Section 13-26-4, induces a prospective
415 purchaser over the telephone, to make and keep an appointment that directly results in the
416 purchase of goods or services by the purchaser that would not have occurred without the
417 telephone solicitation and inducement by the solicitor;

418 ~~[(iii)]~~ (C) the seller offers or promises a premium to a prospective purchaser if:

419 ~~[(A)]~~ (I) the seller induces the prospective purchaser to initiate a telephone contact with
420 the telephone soliciting business; and

421 ~~[(B)]~~ (II) the resulting solicitation meets the requirements of Subsection (7)(a); or

422 ~~[(iv)]~~ (D) the solicitor solicits a charitable donation involving the exchange of any
423 premium, prize, gift, ticket, subscription, or other benefit in connection with any appeal made
424 for a charitable purpose by an organization that is not otherwise exempt under Subsection
425 13-26-4(2)(b)(iv)[-]; or

426 (ii) a telephone solicitation as defined in Section 13-25a-102.

427 (b) A solicitation of sale or telephone solicitation is considered complete when made,
428 whether or not the person receiving the solicitation agrees to the sale or to make a charitable

429 donation.

430 (8) "Telephone soliciting business" means a sole proprietorship, partnership, limited
431 liability company, corporation, or other association of individuals engaged in a common effort
432 to solicit sales regulated under this chapter.

433 (9) "Telephone solicitor" or "solicitor" means a person, partnership, limited liability
434 company, corporation, or other entity that:

435 (a) makes, places, or receives telephone calls for the purpose of selling or solicitation
436 of sales as defined in Subsection (7) over the telephone, whether the calls originate in Utah or
437 are received in Utah[:]; or

438 (b) is defined as a telephone solicitor in Section 13-25a-102.

439 **Section 8. Repealer.**

440 This bill repeals:

441 **Section 13-11-4.5, Deceptive act or practice by person other than a supplier.**

442 **Section 9. Effective date.**

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

Fiscal Note

Consumer Protection Amendments

23-Jan-04

Bill Number HB0195S0110:30 AM

State Impact

This bill may result in higher fine revenue but no reliable estimate is possible.

Individual and Business Impact

Fines may be larger.

Office of the Legislative Fiscal Analyst