

1 **TELEPHONE AND FACSIMILE**

2 **SOLICITATION ACT**

3 2004 GENERAL SESSION

4 STATE OF UTAH

5 **Sponsor: David L. Thomas**

7 **LONG TITLE**

8 **General Description:**

9 This bill modifies the Telephone and Facsimile Solicitation Act.

10 **Highlighted Provisions:**

11 This bill:

- 12 ▶ provides that the state no-call database applies only to unsolicited telephone calls;
- 13 ▶ modifies the methods by which the Division of Consumer Protection establishes,
- 14 maintains, and administers the state no-call database; and
- 15 ▶ makes technical changes clarifying the persons and entities that are exempt from
- 16 certain aspects of the chapter.

17 **Monies Appropriated in this Bill:**

18 None

19 **Other Special Clauses:**

20 None

21 **Utah Code Sections Affected:**

22 AMENDS:

23 **13-25a-103**, as last amended by Chapter 263, Laws of Utah 2003

24 **13-25a-108**, as enacted by Chapter 263, Laws of Utah 2003

25 **13-25a-109**, as enacted by Chapter 263, Laws of Utah 2003

26 **13-25a-111**, as enacted by Chapter 263, Laws of Utah 2003



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

29 Section 1. Section **13-25a-103** is amended to read:

30 **13-25a-103. Prohibited conduct for telephone solicitations -- Exceptions.**

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

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

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

36 (b) to a person with whom the solicitor has an established business relationship[~~;~~or].
37 [~~(c) by or on behalf of a charitable organization as defined in Section 13-22-2.~~]

38 (3) A person may not make a telephone solicitation to a residential telephone without
39 prior express consent during any of the following times:

40 (a) before 8 a.m. or after 9 p.m. local time;

41 (b) on a Sunday; or

42 (c) on a legal holiday.

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

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

47 (a) identify themselves;

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

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

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

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

56 (6) A telephone solicitor may not withhold the display of the telephone solicitor's
57 telephone number from a caller identification service when that number is being used for
58 telemarketing purposes and when the telephone solicitor's service or equipment is capable of

59 allowing the display of the number.

60 Section 2. Section **13-25a-108** is amended to read:

61 **13-25a-108. Objections to telephone solicitations.**

62 [(1)] A person may not make or cause to be made [a] an unsolicited telephone
63 [~~solicitation~~] call within Utah to a telephone number contained in the no-call database
64 established under Section 13-25a-109.

65 [(2)] ~~It is an affirmative defense to a violation of this section that the person making the~~
66 ~~telephone call in violation of this section made the telephone call in reliance on a current~~
67 ~~database:]~~

68 [(a)] ~~established by any federal agency, and]~~

69 [(b)] ~~that establishes a national database of telephone numbers of persons who object to~~
70 ~~receiving telephone solicitations:]~~

71 [(3)] ~~This section does not apply to a telephone solicitation made by or on behalf of a~~
72 ~~charitable organization as defined in Section 13-22-2:]~~

73 Section 3. Section **13-25a-109** is amended to read:

74 **13-25a-109. No-call database.**

75 (1) (a) [~~The~~] In accordance with Subsection (1)(b), the division shall establish and
76 provide for the operation of a no-call database to compile a list of telephone numbers of
77 persons who have provided notice [to the division] of the person's objection to receiving [a] an
78 unsolicited telephone [~~solicitation~~] call.

79 [(2)] ~~A person that requests to have the person's telephone number included in the~~
80 ~~no-call database shall pay an annual registration fee determined by the division in accordance~~
81 ~~with Section 63-38-3.2:]~~

82 [(3)] ~~A person desiring to make telephone solicitations may obtain a copy of the no-call~~
83 ~~database maintained by the division under this section if the person pays an annual registration~~
84 ~~fee determined by the division in accordance with Section 63-38-3.2:]~~

85 (b) The no-call database described in Subsection (1)(a) shall consist of the Utah
86 telephone numbers contained in the national "do-not-call" registry established and maintained
87 by the Federal Trade Commission pursuant to 16 C.F.R. 310.4(b)(1)(iii)(B).

88 [(4)] (2) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking
89 Act, the division [~~shall~~] may adopt rules to:

90 ~~[(a) establish the methods by which a person may give notice to the division, including~~
91 ~~notice by telephone, Internet, mail, or in-person communication, of:]~~

92 ~~[(i) the person's objection to receiving a telephone solicitation; or]~~

93 ~~[(ii) the person's lifting of the person's objection to receiving a telephone solicitation;]~~

94 ~~[(b) specify the amount of time after a person provides notice to the division, not to~~
95 ~~exceed 90 calendar days, after which the inclusion of the person's telephone number in the~~
96 ~~no-call database shall be effective against a person making a telephone solicitation;]~~

97 ~~[(c) establish the effect of a change of telephone number by a person whose telephone~~
98 ~~number is contained in the no-call database;]~~

99 ~~[(d) establish methods by which a person desiring to make telephone solicitations may~~
100 ~~obtain a copy of the no-call database;]~~

101 ~~[(e)] (a) define the improper use of the no-call database;~~

102 ~~[(f)] (b) define [penalties] administrative fines for the improper use of the no-call~~
103 ~~database, which may not be greater than those imposed for a violation of the national~~
104 ~~[database] "do-not-call" registry described in Subsection [(5)] (1)(b); and~~

105 ~~[(g)] (c) define [penalties] administrative fines against a person that registers another~~
106 ~~person to the no-call database without that person's consent.~~

107 ~~[(5) If any federal agency establishes a national database of telephone numbers of~~
108 ~~persons who object to receiving telephone solicitations, the division shall:]~~

109 ~~[(a) include Utah telephone numbers from the national database in the no-call database~~
110 ~~maintained under this section; and]~~

111 ~~[(b) at least once every three months, forward to the national database all telephone~~
112 ~~numbers contained in the no-call database maintained under this section.]~~

113 ~~[(6)] (3) Information contained in the no-call database maintained under this section~~
114 ~~shall be classified as private under Title 63, Chapter 2, Government Records Access and~~
115 ~~Management Act, and shall be used only for purposes of:~~

116 (a) compliance with this chapter; or

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

118 Section 4. Section **13-25a-111** is amended to read:

119 **13-25a-111. Exemptions.**

120 Notwithstanding any other provision of this chapter, the provisions of Sections

121 13-25a-103 and 13-25a-108 do not apply to ~~[a person that holds a license or registration]:~~
122 (1) a telephone call made by or on behalf of a charitable organization as defined in
123 Section 13-22-2; or
124 (2) a person that holds a license or registration:
125 ~~[(1)]~~ (a) under Title 31A, Insurance Code;
126 ~~[(2)]~~ (b) issued by the Division of Real Estate established in Section 61-2-5; or
127 ~~[(3) by or on behalf of a charitable organization as defined in Section 13-22-2; or]~~
128 ~~[(4)]~~ (c) issued by the National Association of Securities Dealers.

Legislative Review Note
as of 10-31-03 12:46 PM

This bill modifies provisions related to the database of persons in Utah who object to receiving unsolicited telephone calls. The database consists of the Utah telephone numbers contained in the national "do-not-call" registry. This area of law is unsettled at present. A federal district court prevented the F.T.C. (Federal Trade Commission) from enforcing the national "do-not-call" registry, which is similar to the Utah database, because it violates protections of commercial speech contained in the First Amendment to the United States Constitution. The Tenth Circuit Court of Appeals has accepted an appeal of that decision. While the Tenth Circuit has not yet decided the appeal, it has allowed the F.T.C. to continue to enforce the registry because the court said there is a substantial likelihood the F.T.C. will win the appeal.

Office of Legislative Research and General Counsel

Fiscal Note
Bill Number SB0027

Telephone and Facsimile Solicitation Act

22-Jan-04

7:51 PM

AMENDED NOTE

State Impact

Costs of implementing this bill can be handled within existing budget. However, if the bill is challenged in court there could be additional costs to the State.

Individual and Business Impact

No fiscal impact.

Office of the Legislative Fiscal Analyst