

CONSUMER PROTECTION AMENDMENTS

2005 GENERAL SESSION

STATE OF UTAH

Sponsor: Sheryl L. Allen

LONG TITLE

General Description:

This bill modifies provisions of the Commerce and Trade Code administered by the Division of Consumer Protection.

Highlighted Provisions:

This bill:

- ▶ allows the Consumer Protection Education and Training Fund to earn interest;
- ▶ increases the amount that may remain in the Consumer Protection Education and Training Fund at the end of the fiscal year;
- ▶ requires a supplier to honor a warranty;
- ▶ requires that an organization be exempt or register before making a charitable solicitation that originates in Utah, is received in Utah, or is made through business operations in Utah;
- ▶ modifies the definition of a health spa for purposes of the Health Spa Services Protection Act;
- ▶ provides for payment of a fee by a health spa for failing to properly file a registration application or renewal;
- ▶ clarifies that a health spa shall calculate its surety requirement based on all the spa's unexpired contracts;
- ▶ modifies the maximum distance from the original location to which a health spa may relocate in order to be exempt from certain requirements;
- ▶ allows the Division of Consumer Protection to pursue administrative orders and fines for violations of the Health Spa Services Protection Act;
- ▶ increases the maximum administrative fine in the Telephone and Facsimile

Solicitation Act to \$2,500;

- ▶ removes a criminal penalty from the Telephone and Facsimile Solicitation Act;
- ▶ prohibits a telephone solicitation to a person who has requested not to receive calls

from that telephone solicitor;

- ▶ modifies exemptions within the Telephone and Facsimile Solicitation Act;
- ▶ modifies definitions within the Telephone Fraud Prevention Act;
- ▶ requires a telephone soliciting business to register if the business makes telephone

solicitations that originate in Utah, or are received in Utah, or if the business conducts business operations in Utah;

- ▶ modifies penalties under the Telephone Fraud Prevention Act;
- ▶ requires a telephone solicitor to orally advise a buyer of the buyer's rescission rights;

and

- ▶ makes technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

This bill provides an immediate effective date.

Utah Code Sections Affected:

AMENDS:

- 13-2-8**, as last amended by Chapter 256, Laws of Utah 2002
- 13-11-4**, as last amended by Chapter 55, Laws of Utah 2004
- 13-22-5**, as last amended by Chapter 210, Laws of Utah 2001
- 13-23-2**, as last amended by Chapter 89, Laws of Utah 1995
- 13-23-3**, as last amended by Chapter 89, Laws of Utah 1995
- 13-23-5**, as last amended by Chapter 196, Laws of Utah 2001
- 13-23-6**, as last amended by Chapter 89, Laws of Utah 1995
- 13-23-7**, as last amended by Chapter 89, Laws of Utah 1995
- 13-25a-105**, as enacted by Chapter 26, Laws of Utah 1996

13-25a-106, as last amended by Chapter 263, Laws of Utah 2003

13-25a-111, as last amended by Chapter 263, Laws of Utah 2004

13-26-2, as last amended by Chapter 55, Laws of Utah 2004

13-26-3, as last amended by Chapter 122, Laws of Utah 2002

13-26-8, as last amended by Chapter 26, Laws of Utah 1995

13-26-11, as last amended by Chapter 77, Laws of Utah 1998

ENACTS:

13-25a-107.2, Utah Code Annotated 1953

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

Section 1. Section **13-2-8** is amended to read:

13-2-8. Consumer Protection Education and Training Fund.

(1) There is created a restricted special revenue fund known as the "Consumer Protection Education and Training Fund."

(2) (a) Unless otherwise provided by a chapter listed in Section 13-2-1, all money not distributed as consumer restitution that is received by the division from administrative fines and settlements, from criminal restitution, or from civil damages, forfeitures, penalties, and settlements when the division receives the monies on its own behalf and not in a representative capacity, shall be deposited into the fund.

(b) Any portion of the fund may be maintained in an interest-bearing account.

(c) All interest earned on fund monies shall be deposited into the fund.

(3) Notwithstanding Title 63, Chapter 38, Budgetary Procedures Act, the division may use the fund with the approval of the executive director of the Department of Commerce in a manner consistent with the duties of the division under this chapter for:

- (a) consumer protection education for members of the public;
- (b) equipment for and training of division personnel;
- (c) publication of consumer protection brochures, laws, policy statements, or other material relevant to the division's enforcement efforts; and

(d) investigation and litigation undertaken by the division.

(4) If the balance in the fund exceeds [~~\$75,000~~] \$100,000 at the close of any fiscal year, the excess shall be transferred to the General Fund.

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

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

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

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

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

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

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

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

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

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

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

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

(i) indicates that the supplier has a sponsorship, approval, or affiliation the supplier does not have;

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

(ii) fails to honor a warranty or a particular warranty term;

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

(l) after receipt of payment for goods or services, fails to ship the goods or furnish the services within the time advertised or otherwise represented or, if no specific time is advertised or represented, fails to ship the goods or furnish the services within 30 days, unless within the applicable time period the supplier provides the buyer with the option to ~~[either]~~:

(i) cancel the sales agreement and receive a refund of all previous payments to the supplier if the refund is mailed or delivered to the buyer within ten business days after the day on which the seller receives written notification from the buyer of the buyer's intent to cancel the sales agreement and receive the refund; or ~~[to]~~

(ii) extend the shipping date to a specific date proposed by the supplier~~[-but any refund shall be mailed or delivered to the buyer within ten business days after the seller receives written notification from the buyer of the buyer's right to cancel the sales agreement and receive the refund];~~

(m) except as provided in Subsection (3)(b), fails to furnish a notice meeting the requirements of Subsection (3)(a) of the purchaser's right to cancel a direct solicitation sale within three business days of the time of purchase if:

(i) the sale is made other than at the supplier's established place of business pursuant to the supplier's personal contact, whether through mail, electronic mail, facsimile transmission, telephone, or any other form of direct solicitation; and [if]

(ii) the sale price exceeds \$25~~[-unless the supplier's cancellation policy is communicated to the buyer and the policy offers greater rights to the buyer than this Subsection (2)(m), which notice shall be a conspicuous statement written in dark bold at least 12 point type, on the first page of the purchase documentation, and shall read as follows: "YOU, THE BUYER, MAY~~

~~CANCEL THIS CONTRACT AT ANY TIME PRIOR TO MIDNIGHT OF THE THIRD BUSINESS DAY (or time period reflecting the supplier's cancellation policy but not less than three business days) AFTER THE DATE OF THE TRANSACTION OR RECEIPT OF THE PRODUCT, WHICHEVER IS LATER."];~~

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

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

(p) if a consumer indicates [~~his~~] the consumer's intention of making a claim for a motor vehicle repair against [~~his~~] the consumer's motor vehicle insurance policy:

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

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

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

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

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

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

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

(r) charges a consumer for a consumer transaction that has not previously been agreed to by the consumer; or

(s) solicits or enters into a consumer transaction with a person who lacks the mental ability to comprehend the nature and consequences of:

(i) the consumer transaction; or

(ii) the person's ability to benefit from the consumer transaction.

(3) (a) The notice required by Subsection (2)(m) shall:

(i) be a conspicuous statement written in dark bold with at least 12 point type on the first page of the purchase documentation; and

(ii) read as follows: "YOU, THE BUYER, MAY CANCEL THIS CONTRACT AT ANY TIME PRIOR TO MIDNIGHT OF THE THIRD BUSINESS DAY (or time period reflecting the supplier's cancellation policy but not less than three business days) AFTER THE DATE OF THE TRANSACTION OR RECEIPT OF THE PRODUCT, WHICHEVER IS LATER".

(b) A supplier is exempt from the requirements of Subsection (2)(m) if the supplier's cancellation policy:

(i) is communicated to the buyer; and

(ii) offers greater rights to the buyer than Subsection (2)(m).

Section 3. Section **13-22-5** is amended to read:

13-22-5. Registration required.

(1) (a) It is unlawful for any organization [that is not] to engage in an activity described in Subsection (1)(b) unless the organization is:

(i) exempt under Section 13-22-8 [to knowingly solicit, request, promote, advertise, or sponsor the solicitation in this state of any contribution for a charitable purpose, unless the

organization is]; or

(ii) registered with the division in accordance with this chapter.

(b) Unless an organization meets the requirements of Subsection (1)(a), the organization may not knowingly solicit, request, promote, advertise, or sponsor a charitable solicitation if the charitable solicitation:

(i) originates in Utah;

(ii) is received in Utah; or

(iii) is caused to be made through business operations in Utah.

(2) Subsection (1) does not prohibit an organization from receiving an unsolicited contribution.

(3) It is unlawful for any professional fund raiser to knowingly solicit, request, promote, advertise, or sponsor the solicitation in this state of any contribution for a charitable organization, whether or not the charitable organization is exempt under Section 13-22-8, unless the professional fund raiser and any nonexempt charitable organization that is benefitted are registered with the division.

(4) It is unlawful for any professional fund raising counsel or consultant to knowingly plan, manage, advise, counsel, consult, or prepare material for, or with respect to, the solicitation in this state of a contribution for a charitable organization, whether or not the charitable organization is exempt under Section 13-22-8, unless the professional fund raising counsel or consultant and any nonexempt charitable organization that is benefitted are registered with the division.

Section 4. Section **13-23-2** is amended to read:

13-23-2. Definitions.

As used in this chapter:

(1) "Consumer" means a purchaser of health spa services for valuable consideration.

(2) "Division" means the Division of Consumer Protection.

(3) (a) "Health spa" means any person, partnership, joint venture, corporation, association, or other entity that, for a charge or fee, provides as one of its primary purposes

services or facilities that are purported to assist patrons to improve their physical condition or appearance through [~~change in weight, weight control, treatment, dieting,~~];

(i) aerobic conditioning[;];

(ii) strength training[;];

(iii) fitness training;

(iv) yoga training;

(v) pilates training; or

(vi) other exercise. [H]

(b) "Health spa" includes any establishment designated [~~as a "reducing salon,"~~];

(i) as a "health spa[;]";

(ii) as a "spa[;]";

(iii) as an "exercise gym[;]";

(iv) as a "health studio[;]";

(v) as a "health club[;]";

(vi) as a "personal training facility";

(vii) as a "yoga facility";

(viii) as a "pilates facility"; or [by]

(ix) with any other similar terms.

[~~(b)~~] (c) "Health spa" does not include:

(i) any facility operated by a licensed physician at which the physician engages in the practice of medicine;

(ii) any facility operated by a health care provider, hospital, intermediate care facility, or skilled nursing care facility;

(iii) any public or private school, college, or university;

(iv) any facility owned or operated by the state or its political subdivisions; or

(v) any facility owned or operated by the United States or its political subdivisions.

(4) "Health spa services" means any service provided by a health spa, including athletic facilities, equipment, and instruction.

Section 5. Section **13-23-3** is amended to read:

13-23-3. Contracts for health spa services.

(1) Any contract for the sale of health spa services shall be in writing. The written contract shall constitute the entire agreement between the consumer and the health spa.

(2) The health spa shall provide the consumer with a fully completed copy of the contract required by Subsection (1) at the time of its execution. The copy shall show:

- (a) the date of the transaction;
- (b) the name and address of the health spa; and
- (c) the name, address, and telephone number of the consumer.

(3) (a) A contract may not have a term in excess of 36 months, but the contract may provide that the consumer may exercise an option to renew the term after its expiration.

(b) Except for a lifetime membership sold prior to May 1, 1995, a health spa may not offer a lifetime membership.

(4) The contract or an attachment to it shall clearly state any rules of the health spa that apply to:

- (a) the consumer's use of its facilities and services; and
- (b) cancellation and refund policies of the health spa.

(5) The contract shall specify which equipment or facility of the health spa;

(a) is omitted from the contract's coverage; or ~~[which]~~

(b) may be changed at the health spa's discretion.

(6) The contract shall clearly state that the consumer has a three-day ~~[recision right provided in Section 13-23-4.]~~ period after the day on which the contract is executed to rescind the contract.

Section 6. Section **13-23-5** is amended to read:

13-23-5. Registration -- Bond, letter of credit, or certificate of deposit required -- Penalties.

(1) (a) (i) It is unlawful for any health spa facility to operate in this state unless the facility is registered with the division.

(ii) Registration is effective for one year. If the health spa facility renews its registration, the registration shall be renewed at least 30 days prior to its expiration.

(iii) The division shall provide by rule for the form, content, application process, and renewal process of the registration.

(b) Each health spa registering in this state shall designate a registered agent for receiving service of process. The registered agent shall be reasonably available from 8 a.m. until 5 p.m. during normal working days.

(c) The division shall charge and collect a fee for registration under guidelines provided in Section 63-38-3.2.

(d) If an applicant fails to file a registration application or renewal by the due date, or files an incomplete registration application or renewal, the applicant shall pay a fee of \$25 for each month or part of a month after the date on which the registration application or renewal were due to be filed, in addition to the registration fee described in Subsection (1)(c).

(2) (a) Each health spa shall obtain and maintain:

(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.

(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:

(i) the health spa's violation of this chapter; or

(ii) ~~as the result of~~ the health spa's going out of business or relocating and failing to offer an alternate location within ~~ten~~ five miles.

(c) (i) The division may recover from the bond, letter of credit, or certificate of deposit the costs of collecting and distributing funds under this section, up to 10% of the face value of the bond, letter of credit, or certificate of deposit but only if the consumers have fully recovered their damages first.

(ii) The total liability of the issuer of the bond, letter of credit, or certificate of deposit may not exceed the amount of the bond, letter of credit, or certificate of deposit.

(iii) The health spa shall maintain a bond, letter of credit, or certificate of deposit in force for one year after it notifies the division in writing that it has ceased all activities regulated by this chapter.

(d) A health spa providing services at more than one location shall comply with the requirements of Subsection (2)(a) for each separate location.

(e) The division may impose a fine against a health spa that fails to comply with the requirements of Subsection (2)(a) of up to \$100 per day that the health spa remains out of compliance. All penalties received shall be deposited into the Consumer Protection Education and Training Fund created in Section 13-2-8.

(3) (a) The minimum principal amount of the bond, letter of credit, or certificate of credit required under Subsection (2) shall be based on the number of unexpired contracts for health spa services to which the health spa is a party, in accordance with the following schedule:

Principal Amount of Bond, Letter of Credit, or Certificate of Deposit	Number of Contracts
\$15,000	500 or fewer
35,000	501 to 1,500
50,000	1,500 to 3,000
75,000	3,001 or more

(b) A health spa that is not exempt under Section 13-23-6 shall comply with Subsection (3)(a) with respect to all of the health spa's unexpired contracts for health spa services, regardless of whether a portion of those contracts satisfy the criteria in Section 13-23-6.

(4) Each health spa shall obtain the bond, letter of credit, or certificate of deposit and furnish a certified copy of the bond, letter of credit, or certificate of deposit to the division prior to selling, offering or attempting to sell, soliciting the sale of, or becoming a party to any contract to provide health spa services. A health spa is considered to be in compliance with this section

only if the proof provided to the division shows that the bond, letter of credit, or certificate of credit is current.

(5) Each health spa shall:

(a) maintain accurate records of the bond, letter of credit, or certificate of credit and of any payments made, due, or to become due to the issuer; and ~~shall~~

(b) open the records to inspection by the division at any time during normal business hours.

(6) If a health spa changes ownership, ceases operation, discontinues facilities, or relocates and fails to offer an alternate location within ~~ten~~ five miles within 30 days after its closing, the health spa is subject to the requirements of this section as if it were a new health spa coming into being at the time the health spa changed ownership. The former owner may not release, cancel, or terminate the owner's liability under any bond, letter of credit, or certificate of deposit previously filed with the division, unless:

(a) the new owner has filed a new bond, letter of credit, or certificate of deposit for the benefit of consumers covered under the previous owner's bond, letter of credit, or certificate of deposit; or

(b) the former owner has refunded all unearned payments to consumers.

(7) If a health spa ceases operation or relocates and fails to offer an alternative location within ~~ten~~ five miles, the health spa shall provide the division with 45 days prior notice.

Section 7. Section **13-23-6** is amended to read:

13-23-6. Exemptions from bond, letter of credit, or certificate of deposit requirement.

A health spa ~~which~~ that offers no paid-in-full membership, but only memberships paid for by installment contracts is exempt from the application of Section 13-23-5 if:

(1) each contract contains the following clause: "If this health spa ceases operation and fails to offer an alternate location within ~~ten~~ five miles, no further payments under this contract shall be due to anyone, including any purchaser of any note associated with or contained in this contract.";

(2) all payments due under each contract, including down payments, enrollment fees, membership fees, or any other payments to the health spa, are in equal monthly installments spread over the entire term of the contract; and

(3) the term of each contract is clearly stated and is not capable of being extended.

Section 8. Section **13-23-7** is amended to read:

13-23-7. Enforcement -- Costs and attorney's fees -- Penalties.

(1) The division may, on behalf of any consumer or on its own behalf, file an action for injunctive relief, damages, or both to enforce this chapter. In addition to any relief granted, the division is entitled to an award for reasonable attorney's fees, court costs, and reasonable investigative expenses.

(2) (a) A person who willfully violates any provision of this chapter, either by failing to comply with any requirement or by doing any act prohibited in this chapter, is guilty of a class B misdemeanor. Each day the violation is committed or permitted to continue constitutes a separate punishable offense.

(b) In the case of a second offense, the person is guilty of a class A misdemeanor.

(c) In the case of three or more offenses, the person is guilty of a third degree felony.

(3) (a) In addition to any other penalty available under this chapter, a person who violates this chapter is subject to:

(i) a cease and desist order; and

(ii) an administrative fine of up to \$2,500 for each separate violation that is not a violation described in Subsection 13-23-5(2)(e) up to \$10,000 for any series of violations arising out of the same operative facts.

(b) All administrative fines collected under this chapter shall be deposited in the Consumer Protection Education and Training Fund created in Section 13-2-8.

Section 9. Section **13-25a-105** is amended to read:

13-25a-105. Penalties -- Administrative and criminal.

(1) Any person who violates this chapter is subject to:

(a) a cease and desist order; and

(b) an administrative fine of not less than \$100 or more than [~~\$1,000~~] \$2,500 for each separate violation.

(2) All administrative fines collected under this chapter shall be deposited in the Consumer Protection Education and Training Fund created in Section 13-2-8.

(3) Any person who intentionally violates this chapter is guilty of a class A misdemeanor and may be fined up to \$2,500. A person intentionally violates this chapter if the violation occurs after the division, attorney general, or a district or county attorney notifies the person by certified mail that he is in violation of this chapter.

Section 10. Section **13-25a-106** is amended to read:

13-25a-106. Enforcement.

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

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

(i) bring an action for temporary or permanent injunctive or other relief in any court of competent jurisdiction for any violation of this chapter[~~.-The court may,;];~~

(ii) upon entry of final judgment, award restitution when appropriate to any person suffering loss because of a violation of this part if proof of loss is submitted to the satisfaction of the court; or

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

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

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

Section 11. Section **13-25a-107.2** is enacted to read:

13-25a-107.2. Requests to a specific telephone solicitor.

(1) A telephone solicitor may not make or cause to be made a telephone solicitation to a

person who has informed the telephone solicitor, either in writing or orally, that the person does not wish to receive a telephone call from the telephone solicitor.

(2) A telephone solicitor is not liable for a violation of this section if the telephone solicitor complies with 16 C.F.R. Part 310.4(b)(3) and (4).

Section 12. Section **13-25a-111** is amended to read:

13-25a-111. Exemptions.

Notwithstanding any other provision of this chapter, ~~[the provisions of]~~ Sections 13-25a-103 and 13-25a-108 do not apply to:

(1) a telephone call made ~~[by or on behalf of a charitable organization]~~ for a charitable purpose as defined in Section 13-22-2; ~~[or]~~

(2) a charitable solicitation as defined in Section 13-22-2; or

~~[(2)]~~ (3) a person ~~[that]~~ who holds a license or registration:

(a) under Title 31A, Insurance Code;

(b) issued by the Division of Real Estate established in Section 61-2-5; or

(c) issued by the National Association of Securities Dealers.

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

13-26-2. Definitions.

As used in this chapter, unless the context otherwise requires:

(1) "Continuity plan" means a shipment, with the prior express consent of the buyer, at regular intervals of similar special-interest products. A continuity plan is distinguished from a subscription arrangement by no binding commitment period or purchase amount.

(2) "Division" means the Division of Consumer Protection.

(3) "Fictitious personal name" means a name other than an individual's true name. An "individual's true name" is the name taken at birth unless changed by operation of law or by civil action.

(4) "Material statement" or "material fact" means information that a person of ordinary intelligence or prudence would consider important in deciding whether or not to accept an offer extended through a telephone solicitation.

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

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

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

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

(A) (I) the seller solicits the sale over the telephone;

(II) the purchaser's agreement to purchase is made over the telephone; and

(III) the purchaser, over the telephone, pays for or agrees to commit to payment for goods or services prior to or upon receipt by the purchaser of the goods or services;

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

(C) the seller offers or promises a premium to a prospective purchaser if:

(I) the seller induces the prospective purchaser to initiate a telephone contact with the telephone soliciting business; and

(II) the resulting solicitation meets the requirements of Subsection (7)(a); or

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

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

(b) A solicitation of sale or telephone solicitation is considered complete when made,

whether or not the person receiving the solicitation agrees to the sale or to make a charitable donation.

(8) "Telephone soliciting business" means a sole proprietorship, partnership, limited liability company, corporation, or other association of individuals engaged in a common effort to ~~[solicit sales regulated under this chapter]~~ conduct telephone solicitations.

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

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

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

(a) makes a telephone solicitation; or

(b) causes a telephone solicitation to be made.

Section 14. Section **13-26-3** is amended to read:

13-26-3. Registration and bond required.

(1) (a) ~~[Each]~~ Unless exempt under Section 13-26-4, 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]~~ division before engaging in telephone solicitations if:

(i) the telephone soliciting business engages in telephone solicitations that:

(A) originate in Utah; or

(B) are received in Utah; or

(ii) the telephone soliciting business conducts any business operations in Utah.

(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~~[-];~~

(i) the business' application for an initial or renewal registration shall be denied~~;~~; and

(ii) any current registration shall be suspended until an agent is designated.

(2) The division may impose an annual registration fee 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:

(i) \$25,000 if:

(A) neither the telephone soliciting business nor any affiliated person has violated this chapter within three years preceding the date of the application; and

(B) the telephone soliciting business has fewer than ten employees;

(ii) \$50,000 if:

(A) neither the telephone soliciting business nor any affiliated person has violated this chapter within three years preceding the date of the application; and

(B) the telephone soliciting business has ten or more employees; or

(iii) \$75,000 if the telephone soliciting business or any affiliated person has violated this chapter within three years preceding the date of the application.

(f) 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 15. Section **13-26-8** is amended to read:

13-26-8. Penalties.

(1) (a) Any telephone soliciting business or any person associated with a telephone soliciting business, including ~~[but not limited to]~~ solicitors, salespersons, agents, representatives of a solicitor, or independent contractor, who violates this chapter as a first offense is guilty of a class B misdemeanor.

(b) In the case of a second offense, the person is guilty of a class A misdemeanor.

(c) In the case of three or more offenses, the person is guilty of a third degree felony.

(d) In addition to other penalties under this ~~[subsection]~~ Subsection (1), the division director may issue a cease and desist order and impose an administrative fine of up to ~~[\$1,000]~~ \$2,500 for each violation of this chapter. All money received through administrative fines imposed under this section shall be deposited in the Consumer Protection Education and Training Fund created by Section 13-2-8.

(2) Any telephone soliciting business or any person associated with a telephone soliciting business, including ~~[but not limited to]~~ solicitors, salespersons, agents, representatives of a

solicitor, or independent contractors, who violates any provision of this chapter shall be subject to a civil penalty in a court of competent jurisdiction not exceeding [~~\$2,000~~] \$2,500 for each unlawful transaction.

Section 16. Section **13-26-11** is amended to read:

13-26-11. Prohibited practices.

(1) It is unlawful for any solicitor:

- (a) to solicit prospective purchasers on behalf of a telephone soliciting business that is not registered with the division or exempt from registration under this chapter;
- (b) to use a fictitious personal name in connection with a telephone solicitation;
- (c) to make or cause to be made any untrue material statement, or fail to disclose a material fact necessary to make any statement made not misleading, whether in connection with a telephone solicitation or a filing with the division;
- (d) to make or authorize the making of any misrepresentation about its compliance with this chapter to any prospective or actual purchaser; [~~or~~]
- (e) to fail to refund within 30 days any amount due a purchaser who exercises the right to cancel under Section 13-26-5[~~;~~]; or
- (f) to fail to orally advise a purchaser of the purchaser's right to cancel under Section 13-26-5 unless the solicitor is exempt under Section 13-26-4.

(2) It is unlawful for any telephone soliciting business:

- (a) to cause or permit any solicitor to violate any provision of this chapter; or
- (b) to use inmates in telephone soliciting operations where inmates have access to personal data about an individual sufficient to physically locate or contact that individual, such as names, addresses, telephone numbers, Social Security numbers, credit card information, or physical descriptions.

Section 17. **Effective date.**

If approved by two-thirds of all the members elected to each house, this bill 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.