

**Senator Parley G. Hellewell** proposes the following substitute bill:

**TELEPHONE SOLICITATION AMENDMENTS**

2006 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Parley G. Hellewell**

House Sponsor: \_\_\_\_\_

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**LONG TITLE**

**General Description:**

This bill addresses telephone solicitation provisions.

**Highlighted Provisions:**

This bill:

- ▶ defines terms;
- ▶ allows a private action under Title 13, Chapter 25a, Telephone and Facsimile Solicitation Act, for a violation of federal law;
- ▶ allows a private right of action for violations of the Telephone Fraud Prevention Act;
- ▶ expands the list of prohibited practices under the Telephone Fraud Prevention Act;
- and
- ▶ makes technical changes.

**Monies Appropriated in this Bill:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:**

AMENDS:



- 26           **13-25a-102**, as last amended by Chapter 263, Laws of Utah 2003
- 27           **13-25a-103**, as last amended by Chapters 90 and 263, Laws of Utah 2004
- 28           **13-25a-107**, as last amended by Chapter 263, Laws of Utah 2003
- 29           **13-26-8**, as last amended by Chapter 18, Laws of Utah 2005
- 30           **13-26-11**, as last amended by Chapter 18, Laws of Utah 2005

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

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

34           **13-25a-102. Definitions.**

35           As used in this chapter:

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

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

- 39           (i) store or produce telephone numbers;
- 40           (ii) call a stored or produced number; and
- 41           (iii) connect the number called with a recorded message or artificial voice.

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

45           (3) "Division" means the Division of Consumer Protection in the Department of  
46 Commerce.

47           (4) (a) "Established business relationship" means a relationship that:

48           (i) is based on inquiry, application, purchase, or transaction regarding products or  
49 services offered;

50           (ii) is formed by a voluntary two-way communication between a person making a  
51 telephone solicitation and a person to whom a telephone solicitation is made; and

52           (iii) has not been terminated by:

- 53           (A) an act by either party; or
- 54           (B) the passage of 18 months since the most recent inquiry, application, purchase,  
55 transaction, or voluntary two-way communication.

56           (b) "Established business relationship" includes a relationship with an affiliate as

57 defined in Section 16-10a-102.

58 (c) A person's seller-specific do not call request terminates an existing business  
59 relationship for the purpose of telemarketing and telephone solicitation, despite a person  
60 continuing to do business with the seller in another context.

61 (5) "Facsimile machine" means equipment used for:

62 (a) scanning or encoding text or images for conversion into electronic signals for  
63 transmission; or

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

66 (6) "Negative response" means a statement from a party stating the party does not wish  
67 to listen to the sales presentation or participate in the solicitation presented in the telephone  
68 call.

69 (7) "Telephone solicitation" means the initiation of a telephone call or message for a  
70 commercial purpose or to seek a financial donation, including calls:

71 (a) encouraging the purchase or rental of, or investment in, property, goods, or services,  
72 regardless of whether the transaction involves a nonprofit organization;

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

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

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

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

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

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

84 (9) "Unsolicited telephone call" means a telephone call for a commercial purpose or to  
85 seek a financial donation other than a call made:

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

87 (b) primarily in connection with an existing debt or contract, payment or performance

88 of which has not been completed at the time of the call;

89 (c) to any person with whom the telephone solicitor has an established business  
90 relationship; or

91 (d) as required by law for a medical purpose.

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

93 **13-25a-103. Prohibited conduct for telephone solicitations -- Exceptions.**

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

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

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

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

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

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

103 (b) on a Sunday; or

104 (c) on a legal holiday.

105 (4) A person may not make or authorize a telephone solicitation in violation of Title 47  
106 U.S.C. Sec. 227 or the Federal Communications Commission regulations implementing that  
107 section.

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

110 (a) identify the telephone solicitor;

111 (b) identify the business on whose behalf the telephone solicitor is soliciting;

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

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

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

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

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

124 **13-25a-107. Private action.**

125 (1) In addition to any other remedies, a person may bring an action in any state court of  
126 competent jurisdiction if:

127 (a) (i) the person has received two or more telephone solicitations or facsimile  
128 advertisements from the same individual or entity that:

129 (A) violates this chapter; or

130 (B) violates Title 47 U.S.C. 227; and

131 (ii) the person, following the first telephone solicitation or facsimile advertisement,  
132 notified the sender of the person's objection to receiving the telephone solicitation or facsimile  
133 advertisement; or

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

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

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

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

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

140 (v) Subsection 13-25a-104(1)[~~7~~]; or

141 (c) the person has a right of action under 47 U.S.C. Sec. 227.

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

143 (a) recover the greater of \$500 for each separate violation of this chapter or the amount  
144 of the pecuniary loss, if any;

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

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

147 Section 4. Section **13-26-8** is amended to read:

148 **13-26-8. Penalties -- Private action.**

149 (1) (a) Any telephone soliciting business or any person associated with a telephone

150 soliciting business, including [~~solicitors, salespersons, agents, representatives~~] a solicitor,  
151 salesperson, agent, representative of a solicitor, or independent contractor, who violates this  
152 chapter as a first offense is guilty of a class B misdemeanor.

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

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

155 (d) (i) In addition to other penalties under this Subsection (1), the division director may  
156 issue a cease and desist order and impose an administrative fine of up to \$2,500 for each  
157 violation of this chapter.

158 (ii) All money received through administrative fines imposed under this section shall  
159 be deposited in the Consumer Protection Education and Training Fund created by Section  
160 13-2-8.

161 [~~(2) Any telephone soliciting business or any person associated with a telephone~~  
162 ~~soliciting business, including solicitors, salespersons, agents, representatives of a solicitor, or~~  
163 ~~independent contractors, who violates any provision of this chapter shall be subject to a civil~~  
164 ~~penalty in a court of competent jurisdiction not exceeding \$2,500 for each unlawful~~  
165 ~~transaction.]~~

166 (2) A person who receives a telephone call in violation of this chapter has a cause of  
167 action against the telephone soliciting business and any person associated with the telephone  
168 soliciting business, including a solicitor, salesperson, agent, representative of a solicitor, or  
169 independent contractor, who violates this chapter.

170 (3) In a suit brought under Subsection (2), the person may:

171 (a) recover not less than \$1,000 nor more than \$2,500 for each separate violation or the  
172 amount of any pecuniary loss, whichever is greater;

173 (b) recover court costs and reasonable attorneys' fees; and

174 (c) seek to enjoin conduct that violates this chapter.

175 Section 5. Section **13-26-11** is amended to read:

176 **13-26-11. Prohibited practices.**

177 (1) It is unlawful for any solicitor:

178 (a) to solicit prospective purchasers on behalf of a telephone soliciting business that is  
179 not registered with the division or exempt from registration under this chapter;

180 (b) to use a fictitious personal name in connection with a telephone solicitation;

181 (c) to make or cause to be made any untrue material statement, or fail to disclose a  
182 material fact necessary to make any statement made not misleading, whether in connection  
183 with a telephone solicitation or a filing with the division;

184 (d) to make or authorize the making of any misrepresentation about its compliance  
185 with this chapter to any prospective or actual purchaser;

186 (e) to fail to refund within 30 days any amount due a purchaser who exercises the right  
187 to cancel under Section 13-26-5; [~~or~~]

188 (f) to fail to orally advise a purchaser of the purchaser's right to cancel under Section  
189 13-26-5 unless the solicitor is exempt under Section 13-26-4[-];

190 (g) when requested by any person during the solicitation, to refuse to provide:

191 (i) the true name of the telephone solicitor; or

192 (ii) the telephone solicitor's address or telephone number; or

193 (h) to provide a false name, telephone number, or caller identification information.

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

195 (a) to cause or permit any solicitor to violate any provision of this chapter; or

196 (b) to use inmates in telephone soliciting operations where inmates have access to  
197 personal data about an individual sufficient to physically locate or contact that individual, such  
198 as names, addresses, telephone numbers, Social Security numbers, credit card information, or  
199 physical descriptions.

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**Fiscal Note**  
**Bill Number SB0203S01**

**Telephone Solicitation Amendments**

*10-Feb-06*

*10:56 AM*

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**State Impact**

No fiscal impact.

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**Individual and Business Impact**

Enforcement is by private right of action.

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**Office of the Legislative Fiscal Analyst**