

TELEPHONE SOLICITATION AMENDMENTS

2008 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Stephen E. Sandstrom

Senate Sponsor: _____

LONG TITLE

General Description:

This bill addresses telephone solicitation provisions.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ addresses the termination of an established business relationship for the purpose of a telephone solicitation;
- ▶ addresses a telephone solicitation made to a telephone number on the federal do not call list;
- ▶ allows an action in state court to enforce a violation of federal telephone solicitation provisions;
- ▶ addresses recovery of damages for a violation of Title 13, Chapter 25a, Telephone and Facsimile Solicitation Act, including allowing recovery for multiple violations within the same telephone call; and
- ▶ makes technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:



28 AMENDS:

29 **13-25a-102**, as last amended by Laws of Utah 2003, Chapter 263

30 **13-25a-103**, as last amended by Laws of Utah 2004, Chapters 90 and 263

31 **13-25a-107**, as last amended by Laws of Utah 2003, Chapter 263



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

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

35 **13-25a-102. Definitions.**

36 As used in this chapter:

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

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

40 (i) store or produce telephone numbers;

41 (ii) call a stored or produced number; and

42 (iii) connect the number called with a recorded message or artificial voice.

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

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

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

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

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

53 (iii) has not been terminated by:

54 (A) an act by either party; or

55 (B) the passage of 18 months since the most recent inquiry, application, purchase,
56 transaction, or voluntary two-way communication.

57 (b) "Established business relationship" includes a relationship with an affiliate as
58 defined in Section 16-10a-102.

- 59 (5) "Facsimile machine" means equipment used for:
60 (a) scanning or encoding text or images for conversion into electronic signals for
61 transmission; or
62 (b) receiving electronic signals and reproducing them as a duplicate of the original text
63 or image.
64 (6) "Negative response" means a statement from a party stating the party does not wish
65 to listen to the sales presentation or participate in the solicitation presented in the telephone
66 call.
67 (7) "Telephone solicitation" means the initiation of a telephone call or message for a
68 commercial purpose or to seek a financial donation, including calls:
69 (a) encouraging the purchase or rental of, or investment in, property, goods, or services,
70 regardless of whether the transaction involves a nonprofit organization;
71 (b) soliciting a sale of or extension of credit for property or services to the person
72 called;
73 (c) soliciting information that will be used for:
74 (i) the direct solicitation of a sale of property or services to the person called; or
75 (ii) an extension of credit to the person called for a sale of property or services; or
76 (d) soliciting a charitable donation involving the exchange of any premium, prize, gift,
77 ticket, subscription, or other benefit in connection with any appeal made for a charitable
78 purpose.
79 (8) "Telephone solicitor" means any natural person, firm, organization, partnership,
80 association, or corporation who makes or causes to be made an unsolicited telephone call,
81 including calls made by use of an automated telephone dialing system.
82 (9) "Unsolicited telephone call" means a telephone call for a commercial purpose or to
83 seek a financial donation other than a call made:
84 (a) in response to an express request of the person called;
85 (b) primarily in connection with an existing debt or contract, payment or performance
86 of which has not been completed at the time of the call;
87 (c) to any person with whom the telephone solicitor has an established business
88 relationship; or
89 (d) as required by law for a medical purpose.

90 (10) "Violates" means:

91 (a) a person fails to comply with this chapter; or

92 (b) a person fails to comply with 47 U.S.C. Sec. 227.

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

94 **13-25a-103. Prohibited conduct for telephone solicitations -- Exceptions.**

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

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

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

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

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

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

104 (b) on a Sunday; or

105 (c) on a legal holiday.

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

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 (7) For purposes of Subsection (2), a person's do not call request made to a telephone
124 solicitor terminates an established business relationship for the purpose of a telephone
125 solicitation, despite the person continuing to do business with the telephone solicitor for
126 another purpose.

127 (8) A telephone solicitor may not make an unsolicited telephone call to a telephone
128 number on the national do not call list maintained by the Federal Trade Commission, unless:

129 (a) the telephone solicitor has express permission to make the telephone call;

130 (b) the telephone solicitor has an established business relationship with a person at the
131 telephone number; or

132 (c) the unsolicited telephone call is permitted under federal law or regulation.

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

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

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

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

139 (A) violates this chapter; or

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

141 (ii) the person, following the first telephone solicitation or facsimile advertisement,
142 notified the sender of the person's objection to receiving the telephone solicitation or facsimile
143 advertisement; or

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

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

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

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

149 (iv) Subsection 13-25a-103(6); [~~or~~]

150 (v) Subsection 13-25a-103(8); or

151 [~~(v)~~] (vi) Subsection 13-25a-104(1)[-]; or

- 152 (c) the person has a right of action under 47 U.S.C. Sec. 227.
153 (2) In a suit brought under Subsection (1), a person may:
154 (a) recover the greater of \$500 or the amount of the pecuniary loss, if any, for each
155 violation of this chapter;
156 (b) recover court costs and reasonable attorneys' fees as determined by the court; and
157 (c) seek to enjoin any conduct in violation of this chapter.
158 (3) A person who has a right to bring an action in state court under this section may
159 recover under Subsection (2) for each violation, including multiple violations occurring during
160 the same telephone call.

Legislative Review Note
as of 1-14-08 2:14 PM

Office of Legislative Research and General Counsel

H.B. 300 - Telephone Solicitation Amendments

Fiscal Note

2008 General Session

State of Utah

State Impact

Enactment of this bill will not require additional appropriations.

Individual, Business and/or Local Impact

Enactment of this bill likely will not result in direct, measurable costs and/or benefits for individuals, businesses, or local governments.
