

1 **TELEPHONE SOLICITATION AMENDMENTS**

2 2021 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: Stewart E. Barlow**

5 Senate Sponsor: Lincoln Fillmore

7 **LONG TITLE**

8 **General Description:**

9 This bill amends penalties in the Telephone and Facsimile Solicitation Act.

10 **Highlighted Provisions:**

11 This bill:

- 12 ▶ defines terms; and
- 13 ▶ enhances penalties for a violator of the Telephone and Facsimile Solicitation Act if

14 the violator solicits an on-call emergency provider while the on-call emergency
15 provider is on call.

16 **Money Appropriated in this Bill:**

17 None

18 **Other Special Clauses:**

19 None

20 **Utah Code Sections Affected:**

21 AMENDS:

22 **13-25a-102**, as last amended by Laws of Utah 2003, Chapter 263

23 **13-25a-105**, as last amended by Laws of Utah 2005, Chapter 18

24 **13-25a-107**, as last amended by Laws of Utah 2020, Chapter 79

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

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

28 **13-25a-102. Definitions.**

29 As used in this chapter:

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

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

33 (i) store or produce telephone numbers;

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

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

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

39 (3) "Division" means the Division of Consumer Protection in the Department of
40 Commerce.

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

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

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

46 (iii) has not been terminated by:

47 (A) an act by either party; or

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

50 (b) "Established business relationship" includes a relationship with an affiliate as
51 defined in Section [16-10a-102](#).

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

53 (a) scanning or encoding text or images for conversion into electronic signals for
54 transmission; or

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

57 (6) "Negative response" means a statement from a party stating the party does not wish

58 to listen to the sales presentation or participate in the solicitation presented in the telephone
59 call.

60 (7) "On-call emergency provider" means an individual who is required by an employer
61 to be on call to respond to a medical emergency.

62 [~~(7)~~] (8) "Telephone solicitation" means the initiation of a telephone call or message
63 for a commercial purpose or to seek a financial donation, including calls:

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

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

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

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

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

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

74 [~~(8)~~] (9) "Telephone solicitor" means any natural person, firm, organization,
75 partnership, association, or corporation who makes or causes to be made an unsolicited
76 telephone call, including calls made by use of an automated telephone dialing system.

77 [~~(9)~~] (10) "Unsolicited telephone call" means a telephone call for a commercial
78 purpose or to seek a financial donation other than a call made:

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

80 (b) primarily in connection with an existing debt or contract, payment or performance
81 of which has not been completed at the time of the call;

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

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

85 Section 2. Section **13-25a-105** is amended to read:

86 **13-25a-105. Penalties -- Administrative and criminal.**

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

88 (a) a cease and desist order; and

89 (b) an administrative fine of not less than \$100 or more than \$2,500 for each separate
90 violation.

91 (2) Any person who violates this chapter by soliciting an on-call emergency provider
92 while the on-call emergency provider is on call is subject to:

93 (a) a cease and desist order; and

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

96 ~~[(2)]~~ (3) All administrative fines collected under this chapter shall be deposited in the
97 Consumer Protection Education and Training Fund created in Section 13-2-8.

98 ~~[(3)]~~ (4) Any person who intentionally violates this chapter is guilty of a class
99 A misdemeanor and may be fined up to \$2,500.

100 (5) A person intentionally violates this chapter if the violation occurs after the division,
101 attorney general, or a district or county attorney notifies the person by certified mail that ~~[he]~~
102 the person is in violation of this chapter.

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

104 **13-25a-107. Private action.**

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

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

109 (A) violates this chapter; or

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

111 (ii) the person, following the first telephone solicitation or facsimile advertisement,
112 notified the sender of the person's objection to receiving the telephone solicitation or facsimile
113 advertisement; or

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

- 116 (i) Subsection 13-25a-103(1);
- 117 (ii) Subsection 13-25a-103(3);
- 118 (iii) Subsection 13-25a-103(5);
- 119 (iv) Subsection 13-25a-103(6); or
- 120 (v) Subsection 13-25a-104(1).

121 (2) In a suit brought under Subsection (1):

122 (a) a person may:

- 123 (i) recover the greater of \$500 or the amount of the pecuniary loss, if any;
- 124 (ii) recover court costs and reasonable attorneys' fees as determined by the court; and
- 125 (iii) seek to enjoin any conduct in violation of this chapter; and

126 (b) ~~[the court may award a person treble the amount of the person's pecuniary loss;]~~ if
127 the court finds that a violation was knowing and willful[-];

128 (i) the court may award an individual treble the amount of the individual's pecuniary
129 loss; or

130 (ii) the court may award an individual the greater of \$1,000 or treble the amount of the
131 individual's pecuniary loss if:

132 (A) the individual who received the solicitation is an on-call emergency provider;

133 (B) the individual was on call at the time the violation occurred; and

134 (C) the individual had notified the sender that the individual is an on-call emergency
135 provider.