

UTAH

Utah Code Ann.

§13-25a-101. Short Title: Telephone and Facsimile Solicitation Act

This chapter [§§13-25a-101 - 13-25a-111] is known as the "Telephone and Facsimile Solicitation Act."

Created by Chapter 26, §1, Laws of 1996, effective April 29, 1996.

§13-25a-102. Definitions Pertaining to Telephone and Facsimile Solicitation Act

As used in this chapter:

- (1) "Advertisement" means material offering for sale, or advertising the availability or quality of, any property, goods, or services.
- (2)(a) "Automated telephone dialing system" means equipment used to:
 - (2)(a)(i) store or produce telephone numbers;
 - (2)(a)(ii) call a stored or produced number; and
 - (2)(a)(iii) connect the number called with a recorded message or artificial voice.

(2)(b) "Automated telephone dialing system" does not include equipment used with a burglar alarm system, voice messaging system, fire alarm system, or other system used in an emergency involving the immediate health or safety of a person.
- (3) "Division" means the Division of Consumer Protection in the Department of Commerce.
- (4)(a) "Established business relationship" means a relationship that:
 - (4)(a)(i) is based on inquiry, application, purchase, or transaction regarding products or services offered;
 - (4)(a)(ii) is formed by a voluntary two-way communication between a person making a telephone solicitation and a person to whom a telephone solicitation is made; and
 - (4)(a)(iii) has not been terminated by:
 - (4)(a)(iii)(A) an act of either party; or
 - (4)(a)(iii)(B) the passage of 18 months since the most recent inquiry, application, purchase, transaction, or voluntary two-way communication.

(4)(b) "Established business relationship" includes a relationship with an affiliate as defined in §16-10a-102.
- (5) "Facsimile machine" means equipment used for:
 - (5)(a) scanning or encoding text or images for conversion into electronic signals for transmission; or
 - (5)(b) receiving electronic signals and reproducing them as a duplicate of the original text or image.

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

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

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

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

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

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

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

(7)(d) soliciting 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.

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

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

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

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

(9)(c) to any person with whom the telephone solicitor has an existing business relationship; or

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

Created by Chapter 26, §3, Laws of 1996, effective April 29, 1996. Amended by Chapter 77, §1, Laws of 1998, effective May 4, 1998; Chapter 122, §1, Laws of 2002, effective May 6, 2002; and Chapter 263, §2, Laws of 2003, effective May 5, 2003.

§13-25a-104. Advertisements Sent by Fax

(1) Except as provided in Subsection (2), a person may not operate or authorize the operation of a facsimile machine to send an advertisement.

(2) A person may operate a facsimile machine if the advertisement is sent:

(2)(a) with the prior express written consent of the person who receives the facsimile agreeing to receive the facsimile from a specific solicitor; or

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

(3) A person may not make or authorize the sending of an advertisement by facsimile in violation of 47 U.S.C. §227 [which governs unsolicited telephone and fax transmissions].

Created by Chapter 26, §5, Laws of 1996, effective April 29, 1996. Amended by Chapter 263, §3, Laws of 2003, effective May 5, 2003.

§13-25a-105. Penalty for Illegal Fax Solicitation

- (1) Any person who violates this chapter is subject to:
 - (1)(a) a cease and desist order; and
 - (1)(b) an administrative fine of not less than \$100 or more than \$1,000 for each separate violation.
- (2) All administrative fines shall be deposited in the Consumer Protection Education and Training Fund created in §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.

Created by Chapter 26, §6, Laws of 1996, effective April 29, 1996.

§13-25a-106. Enforcement of Telephone and Facsimile Solicitation Act

- (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:
 - (2)(a)(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, 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;
 - (2)(a)(ii) bring an action in any court of competent jurisdiction for the collection of penalties authorized under §13-25a-105(1); or
 - (2)(a)(iii) bring an action under §13-25a-105(3).
- (2)(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.

Created by Chapter 26, §7, Laws of 1996, effective April 29, 1996. Amended by Chapter 263, §4, Laws of 2003, effective May 5, 2003.

§13-25a-107. Private Right to Sue Under Telephone and Facsimile Solicitation Act

- (1) In addition to any other remedies, a person may bring an action in any state court of competent jurisdiction if:
 - (1)(a)(i) the person has received two or more telephone solicitations or facsimile advertisements from the same individual or entity that:
 - (1)(a)(i)(A) violates this chapter; or
 - (1)(a)(i)(B) violates 47 U.S.C. §227; and
 - (1)(a)(ii) the person, following the first telephone solicitation or facsimile advertisement, notified the sender of the person's objection to receiving the telephone solicitation or facsimile advertisement; or
- (1)(b) the person has received one telephone solicitation or facsimile advertisement in violation of:
 - (1)(b)(i) §13-25a-103(1) [*which restricts the use of a automatic telephone*

dialing system];

(1)(b)(ii) §13-25a-103(3) *[which bans telephone solicitation during certain times];*

(1)(b)(iii) §13-25a-103(5) *[which requires a telephone solicitor to identify oneself and hang up when asked to do so];*

(1)(b)(iv) §13-25a-103(6) *[which forbids a telephone solicitor to hide his or her number from a caller ID program];* or

(1)(b)(v) §13-25a-104(1).

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

(2)(a) recover the greater of \$500 or the amount of the pecuniary loss, if any;

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

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

Created by Chapter 26, §8, Laws of 1996, effective April 29, 1996. Amended by Chapter 263, §5, Laws of 2003, effective May 5, 2003.

§13-25a-111. Exemptions From Telephone and Facsimile Solicitation Act

Notwithstanding any other provision of this chapter, the provisions of §§13-25a-103 *[which defines prohibited acts by telephone solicitors]* and 13-25a-108 *[which forbids telephone solicitations to persons in the do-not-call database]* do not apply to:

(1) a telephone call for a charitable purpose as defined in §13-22-2; or

(2) a person that holds a license or registration:

(2)(a) under Title 31A, Insurance Code;

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

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

Created by Chapter 263, §9, Laws of 2003, effective May 5, 2003. Amended by Chapter 263, §4, Laws of 2004, effective May 3, 2004; and Chapter 18, §12, Laws of 2005, effective March 8, 2005.