

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 238

BY WAYS AND MEANS COMMITTEE

AN ACT

1 RELATING TO UNFAIR SERVICE AGREEMENTS; AMENDING TITLE 48, IDAHO CODE, BY  
2 THE ADDITION OF A NEW CHAPTER 20, TITLE 48, IDAHO CODE, TO PROVIDE A  
3 SHORT TITLE, TO DEFINE TERMS, TO PROVIDE FOR CHARACTERISTICS OF UNFAIR  
4 SERVICE AGREEMENTS, TO PROVIDE EXCEPTIONS, TO PROHIBIT RECORDING, TO  
5 PROVIDE FOR COUNTY RECORDER IMMUNITY, TO PROVIDE THAT UNFAIR SERVICE  
6 AGREEMENTS ARE UNENFORCEABLE, TO PROVIDE THAT SOLICITATION OF UNFAIR  
7 SERVICE AGREEMENTS CONSTITUTES AN UNFAIR METHOD OF COMPETITION AND AN  
8 UNFAIR OR DECEPTIVE ACT OR PRACTICE, TO PROVIDE FOR THE AUTHORITY OF THE  
9 ATTORNEY GENERAL AND THE DISTRICT COURTS, AND TO PROVIDE FOR REMEDIES;  
10 AND DECLARING AN EMERGENCY AND PROVIDING AN EFFECTIVE DATE.  
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12 Be It Enacted by the Legislature of the State of Idaho:

13 SECTION 1. That Title 48, Idaho Code, be, and the same is hereby amended  
14 by the addition thereto of a NEW CHAPTER, to be known and designated as Chap-  
15 ter 20, Title 48, Idaho Code, and to read as follows:

16 CHAPTER 20

17 PROHIBITION OF UNFAIR SERVICE AGREEMENTS ACT

18 48-2001. SHORT TITLE. This chapter shall be known and may be cited as  
19 the "Prohibition of Unfair Service Agreements Act."

20 48-2002. DEFINITIONS. As used in this chapter:

21 (1) "County recorder" means a county's clerk of the district court,  
22 elected or appointed pursuant to article V of the constitution of the state  
23 of Idaho, who serves as ex officio recorder under article XVIII of the  
24 constitution of the state of Idaho or any other individual officially desig-  
25 nated to serve in said capacity.

26 (2) "Person" means natural persons, corporations both foreign and do-  
27 mestic, trusts, partnerships both limited and general, incorporated or un-  
28 incorporated associations, companies, business entities, and any other le-  
29 gal entity or any other group associated in fact although not a legal entity  
30 or any agent, assignee, heir, employee, representative, or servant thereof.

31 (3) "Record" or "recording" means placement of a document or instrument  
32 in the official county public land records.

33 (4) "Residential real property" means real property located in this  
34 state that is used primarily for personal, family, or household purposes and  
35 is improved by one (1) to four (4) dwelling units.

36 (5) "Service agreement" means a contract under which a person agrees to  
37 provide services in connection with the maintenance of or purchase or sale of  
38 residential real property.

39 (6) "Service provider" means an individual or entity that provides ser-  
40 vices to a person.

1 48-2003. CHARACTERISTICS OF UNFAIR SERVICE AGREEMENTS. (1) A service  
2 agreement is unfair pursuant to this chapter if any part of the agreement  
3 provides an exclusive right to a service provider for a term in excess of one  
4 (1) year after the time it is entered into and has any of the following char-  
5 acteristics:

6 (a) The service agreement purports to run with the land or to be binding  
7 on future owners of interests in the real property;

8 (b) The service agreement allows for assignment of the right to provide  
9 service without notice to and consent of the owner of residential real  
10 property; or

11 (c) The service agreement is recorded or purports to create a lien, en-  
12 cumbrance, or other real property security interest.

13 (2) The following are not unfair service agreements pursuant to this  
14 chapter:

15 (a) A home warranty or similar product that covers the cost of mainte-  
16 nance of a major home system or appliance for a fixed period;

17 (b) An insurance contract;

18 (c) A mortgage loan or a commitment to make or receive a mortgage loan;

19 (d) An option or right of refusal to purchase the residential real prop-  
20 erty;

21 (e) A declaration of any covenants, conditions, or restrictions  
22 created in the formation of a homeowners association, a group of con-  
23 dominium owners, or other common interest community or an amendment  
24 thereto;

25 (f) A maintenance or service agreement entered by a homeowners associa-  
26 tion in a common interest community;

27 (g) A security agreement governed by Idaho's uniform commercial code  
28 relating to the sale or rental of personal property or fixtures;

29 (h) A contract with a gas, water, sewer, electrical, telephone, cable,  
30 or other utility service provider; or

31 (i) A contract for the provision of water to real property for domestic,  
32 irrigation, or other purposes.

33 (3) This chapter does not impair any lien right granted pursuant to  
34 Idaho Code or judicially imposed.

35 48-2004. RECORDING PROHIBITED -- COUNTY RECORDER IMMUNITY. (1) No  
36 person shall present or send to any county recorder for recording or cause to  
37 be recorded by said recorder an unfair service agreement or notice or memo-  
38 randum thereof.

39 (2) In the event that a county recorder does record an unfair service  
40 agreement, the county recorder shall incur no liability for doing so.

41 (3) If an unfair service agreement is recorded, it shall not create a  
42 lien or provide constructive notice to any third party, bona fide purchaser,  
43 or creditor.

44 48-2005. UNFAIR SERVICE AGREEMENTS UNENFORCEABLE. If a service agree-  
45 ment is unfair pursuant to this chapter, it is unenforceable, shall not cre-  
46 ate a contractual obligation or relationship, and attempting to enforce the  
47 same is a violation of the Idaho consumer protection act, chapter 6, title

1 48, Idaho Code. Any waiver of a consumer right, including a right to trial by  
2 jury, in an unfair service agreement is void.

3 48-2006. SOLICITATION OF UNFAIR SERVICE AGREEMENTS. Encouraging any  
4 consumer to enter into an unfair service agreement by any service provider  
5 constitutes an unfair method of competition and an unfair or deceptive act or  
6 practice under the Idaho consumer protection act, chapter 6, title 48, Idaho  
7 Code.

8 48-2007. AUTHORITY OF THE ATTORNEY GENERAL AND THE DISTRICT  
9 COURTS. The attorney general and the district court shall have the same au-  
10 thority in enforcing and carrying out the provisions of this chapter as is  
11 granted the attorney general and district courts under the Idaho consumer  
12 protection act, chapter 6, title 48, Idaho Code. Said authority shall be  
13 non-exclusive.

14 48-2008. REMEDIES. (1) Any consumer that is party to an unfair service  
15 agreement related to residential real property or any person with an inter-  
16 est in the property that is the subject of that agreement may bring an ac-  
17 tion in district court in the county where the property is located to obtain a  
18 declaratory judgment that the agreement is unenforceable and to recover any  
19 other damages, costs, and attorney's fees as may be proven.

20 (2) In the event that an unfair service agreement or a notice or memo-  
21 randum thereof is recorded against any residential real property, any judg-  
22 ment obtained pursuant to this section, once certified by the clerk having  
23 custody thereof, may be recorded and indexed against the real property en-  
24 cumbered or clouded by the unfair service agreement.

25 (3) The remedies provided for in this chapter are not exclusive and  
26 shall not reduce any other rights or remedies a party may have in equity or in  
27 law.

28 (4) No private action may be brought pursuant to this chapter more than  
29 two (2) years after the expiration of the term printed in the unfair service  
30 agreement.

31 SECTION 2. An emergency existing therefor, which emergency is hereby  
32 declared to exist, this act shall be in full force and effect on and after  
33 July 1, 2023.