

TITLE 48
MONOPOLIES AND TRADE PRACTICES

CHAPTER 10
IDAHO TELEPHONE SOLICITATION ACT

48-1001. LEGISLATIVE FINDINGS AND INTENT. (1) The use of telephones for commercial solicitation is rapidly increasing. This form of communication offers unique benefits, but also entails special risks and the potential for abuse. Many Idaho residents and businesses have lost money or suffered harm primarily as a result of out-of-state telemarketing abuse. For the general welfare of the public and in order to protect the integrity of the telemarketing industry, the following provisions of law are deemed necessary.

(2) It is the intent of the legislature in enacting this chapter to safeguard the public against deceit and financial hardship, to insure, foster and encourage competition and fair dealings among telephone solicitors by requiring adequate disclosure, and to prohibit representations that have the capacity, tendency, or effect of misleading a purchaser. The provisions of this chapter are remedial, and shall be construed and applied liberally to accomplish the above-stated purposes.

(3) This chapter shall be known and may be cited as the "Idaho Telephone Solicitation Act."

[48-1001, added 1992, ch. 27, sec. 1, p. 83.]

48-1002. DEFINITIONS. In this chapter:

(1) "Business days" means all days of the week except Saturdays and Sundays and all other legal holidays as defined in section [73-108](#), Idaho Code.

(2) "Conducting business" means making telephone solicitations either to or from locations within the state of Idaho.

(3) "Established business relationship" means a relationship that:

(a) Was formed, prior to a telephone solicitation, through a voluntary, two-way communication between a seller or telephone solicitor and a residential subscriber, with or without consideration, on the basis of an application, purchase, ongoing contractual agreement, or commercial transaction between the parties regarding products or services offered by such seller or telephone solicitor;

(b) Has not been previously terminated by either party; and

(c) Currently exists or has existed within the immediately preceding eighteen (18) months.

(4) "Goods" means any property, tangible or intangible, real, personal or mixed, and any other article, commodity, or thing of value.

(5) "Minor" means any person less than eighteen (18) years of age.

(6) "Newspaper of general circulation" means a newspaper which holds a second class mailing permit from the United States postal service, has at least two hundred (200) subscribers, is made up of at least four (4) pages of at least five (5) columns, is not produced through any type of mimeographing process, and has been published or distributed within the state of Idaho on a weekly basis for at least seventy-eight (78) consecutive weeks, or on a daily basis, which is defined to be no less than five (5) days of any one (1) week, at least twelve (12) months immediately preceding any telephone solicitation done by or on behalf of such newspaper.

(7) "Person" means natural persons, partnerships, both limited and general, corporations, both foreign and domestic, companies, trusts,

business entities, associations, both incorporated and unincorporated, and any other legal entity or any group associated in fact although not a legal entity, or any agent, assign, heir, servant, employee or representative thereof.

(8) "Purchaser" means a person who is solicited to become or does become obligated to a telephone solicitor.

(9) "Services" means any work, labor, help, assistance or instruction wherever provided or performed.

(10) "Telephone directory of general circulation" means a directory containing telephone numbers of individual residents and/or businesses which is published on a community-wide or regional basis and which is widely available to persons residing in such community or region through free distribution or direct purchase of said directory without the requirement of other purchases or affiliations.

(11) "Telephone solicitation" means:

(a) Any unsolicited telephone call to a purchaser for the purpose of asking, inducing, inviting, requesting, or encouraging the purchaser to purchase or invest in goods or services during the course of a telephone call; or

(b) Any communication in which:

(i) A free gift, award, or prize is offered, or in which it is represented or implied that goods or services are offered below the regular price of the goods or services; and

(ii) A return telephone call is invited or the communication is followed up by a call to the purchaser by the telephone solicitor; and

(iii) It is intended during the course of the return or follow-up call with the purchaser that an agreement to purchase, or a purchase be made.

(c) For purposes of this subsection, "communication" means a written or oral statement or notification or advertisement transmitted to the purchaser through any means.

(12) "Telephone solicitor" means any person who, on his own behalf or through other persons or through use of an automatic dialing-announcing device, engages in a telephone solicitation.

(13) "Unsolicited advertisement" means any advertisement offering goods or services which is transmitted to any person without that person's prior express invitation or permission unless an established business relationship exists between the sender and recipient which has not been terminated by either party.

(14) "Written confirmation" means a writing that includes the following information: the date of purchase, the telephone solicitor's complete address and registration number, a listing of all goods and/or services purchased, a listing of the price of each good and/or service purchased, the total obligation incurred by the purchaser, and the notice of cancellation as set forth in subsection (2) of section [48-1004](#), Idaho Code.

[48-1002, added 1992, ch. 27, sec. 1, p. 83; am. 1998, ch. 331, sec. 1, p. 1064; am. 2000, ch. 452; sec. 2, p. 1422; am. 2004, ch. 102, sec. 1, p. 358.]

48-1003. UNLAWFUL ACTS. (1) It is an unlawful act for a telephone solicitor to:

- (a) Intimidate or torment any person of normal and reasonable sensitivities in connection with a telephone solicitation;
- (b) Refuse to hang up and free the purchaser's line immediately once requested to do so by the purchaser;
- (c) Misrepresent the price, quality, or availability of the goods or services being offered to the purchaser, or not to disclose all material matters relating directly or indirectly to the offered goods or services;
- (d) Advertise, represent, or imply that the person has the approval or endorsement of any government, governmental office, or agency, unless such is the fact;
- (e) Advertise, represent, or imply that the person has a valid registration number when the person does not;
- (f) Utilize any device or method to block or mislead the intended recipient of the call as to the identity of the solicitor, or the trade name of the person being represented by the solicitor on a caller identification telecommunication device;
- (g) Fail to comply with the provisions of section [48-603A](#), Idaho Code;
- (h) Violate any applicable provision or requirement of this chapter; and
- (i) Send an unsolicited advertisement to a telephone facsimile machine.

(2) Any violation of the provisions of this chapter is an unlawful, unfair, and deceptive act or practice in trade or commerce for the purpose of applying the Idaho consumer protection act, [chapter 6, title 48](#), Idaho Code.

[48-1003, added 1992, ch. 27, sec. 1, p. 85; am. 1997, ch. 224, sec. 1, p. 660; am. 1999, ch. 46, sec. 1, p. 108.]

48-1003A. NO TELEPHONE SOLICITATION CONTACT LIST.

- (1) (a) Any Idaho residential, mobile or telephonic paging device telephone subscriber desiring to be placed on the Idaho "no telephone solicitation contact" list, indicating that the subscriber does not wish to receive telephone solicitations, may be placed upon such list through a procedure approved by the attorney general.
- (b) Notwithstanding any other provision of this chapter, a national "do-not-call" registry established and maintained by the federal trade commission, pursuant to 16 CFR 310.4(b)(1)(iii)(B), may serve as the Idaho "no telephone solicitation contact" list provided by this chapter. The attorney general may provide to the federal trade commission, for inclusion in the national "do-not-call" registry, the telephone numbers of Idaho residents that are on the Idaho "no telephone solicitation contact" list.
- (2) It is a violation of the provisions of this chapter for a telephone solicitor to make or cause to be made any telephone solicitation, as defined by section [48-1002](#)(11)(a), Idaho Code, to any telephone number which is assigned by a telephone company to an Idaho resident listed on the Idaho "no telephone solicitation contact" list when that telephone number has been on such list for at least three (3) months prior to the date the telephone solicitation is made.
- (3) Section [48-1006](#), Idaho Code, notwithstanding, any violation of the provisions of this section shall subject the person violating the terms of the provisions of this section to a civil penalty, to be imposed by the district court, as follows: for the first violation, not to exceed five hundred

dollars (\$500); for the second violation, not to exceed two thousand five hundred dollars (\$2,500); for the third and subsequent violations, not to exceed five thousand dollars (\$5,000) per violation. Penalties received under the provisions of this section shall be expended pursuant to legislative appropriation.

(4) This section is not applicable to telephone solicitations:

(a) To a telephone subscriber's commercial or business telephone number;

(b) Where an established business relationship exists, as defined in subsection (3) of section [48-1002](#), Idaho Code, between the telephone solicitor and the telephone subscriber and the subscriber has not stated to the telephone solicitor that he does not wish to receive telephone solicitations made by or on behalf of the business with whom the established business relationship exists;

(c) By a minor seeking to sell a good or service, pursuant to a telephone solicitation, for a charitable purpose or organization.

(5) The attorney general shall advise telephone subscribers who register with his office under the provisions of this section of all self-help measures available to them to reduce unwanted telephone solicitations.

[48-1003A, added 2000, ch. 452, sec. 3, p. 1424; am. 2004, ch. 102, sec. 2, p. 360; am. 2013, ch. 130, sec. 1, p. 299.]

48-1003B. CONSENT REQUIRED FOR TELEMARKETING CHARGES TO PREVIOUSLY OBTAINED ACCOUNTS. (1) As used in this section:

(a) "Account" means a credit card, debit card, checking account, savings account, loan account, telephone service account, utility account or other similar account.

(b) "Account holder" means a consumer who owns an account, or a consumer who has authority to cause a charge or debit to an account.

(c) "Authorization" means an account holder providing express consent to a telemarketer or person acting on behalf of the telemarketer, to charge or cause to be charged the account holder's account for the purchase of goods or services. Authorization is not effective until the account holder has been advised, clearly and conspicuously:

(i) That the telemarketer has the account holder's account number;

(ii) That the telemarketer is going to charge the account holder's account;

(iii) The specific account that will be charged;

(iv) The specific amount that the account holder's account will be charged; and

(v) The name, address and telephone number of the person who will be charging the account holder's account.

(d) "Charge" means a charge or debit, or an attempt to charge or debit, an account, if that account can be charged without the express written authorization of the account holder to each specific charge or debit. Charge does not include a charge or debit, or an attempt to charge or debit, a telephone service account for local or long distance telecommunications services. A charge can occur by electronic or any other means.

(e) "Goods" or "services" has the meaning given to them in section [48-1002](#) (4) and (9), Idaho Code, except that for purposes of this section

these terms are limited to goods or services which are normally used for personal, household or family purposes.

(f) "Previously obtained account number telemarketing call" means a telephone call in which the telemarketer attempts to obtain account holder authorization for a current or future charge without obtaining the account number from the account holder during the call; provided however, that "previously obtained account number telemarketing call" does not include the sale of securities through a telephone call, if the telemarketer is a licensed securities agent or broker in the state of Idaho; provided further, that "previously obtained account number telemarketing call" does not include a telephone call initiated by an account holder during which the person receiving the telephone call attempts to sell, offer for sale, or otherwise induce the account holder to purchase goods or services. A "previously obtained account number telemarketing call" does not include a call to or from a current customer of the telemarketer to renew or extend, inquire about or add goods or services if the customer has previously provided account information for billing purposes to the telemarketer and the telemarketer clearly and conspicuously discloses that such renewal or extension, or additional goods or services, will be debited to the same account.

(g) "Telemarketer" means any person who regularly engages in a previously obtained account number telemarketing call.

(2) A telemarketer shall not charge or cause a charge to an account holder's account as a result of a previously obtained account number telemarketing call unless the telemarketer has first obtained authorization from the account holder for the specific charge discussed during the call.

(3) An account holder's authorization can be in writing or given verbally. If the telemarketer uses written authorization, the telemarketer cannot charge the account holder's account until the account holder's written authorization is received by the telemarketer. If the telemarketer uses verbal authorization, either (i) the authorization must be audio taped by the telemarketer and the telemarketer must advise the account holder that his or her authorization is being recorded or (ii) the account holder must disclose the last four (4) digits of the account holder's account number if the telemarketer has reasonable procedures in effect to verify that such digits as provided by the account holder match the last four digits of the account to be charged. Authorizations must be kept and maintained for a period of two (2) years and must also be made available to the account holder upon written request.

(4) (a) In the case where a telemarketer utilizes a voice response unit, whether inbound or outbound, an account holder may give authorization by providing the last four (4) digits of the account holder's account number, an account number previously assigned to the account holder by the telemarketer, or an alternate unique identifier which enables the telemarketer to verify or confirm the account holder's authorization; provided however, that the information set forth in subsection (1) (c) of this section must first be clearly and conspicuously disclosed to the account holder.

(b) For purposes of this subsection, "voice response unit" means a device which allows a user to provide or obtain information from a computer system using touch-tone input or speech input.

48-1003C. AUTOMATIC DIALING-ANNOUNCING DEVICE. (1) When a person intends to utilize an automatic dialing-announcing device to send a message by using or connecting to a telephone line, the person must, at the outset of the message, disclose the following:

- (a) The name of the person for whom the message is being made;
- (b) The purpose of the message; and
- (c) The contact information of the caller.

(2) As used in this section:

(a) "Automatic dialing-announcing device" means a device that selects and dials telephone numbers and that, working alone or in conjunction with other equipment, disseminates a prerecorded or synthesized voice message to the telephone number called.

(b) "Caller" means a person who contacts, or attempts to contact, a subscriber in this state by using an automatic dialing-announcing device.

(c) "Subscriber" means a person who has subscribed to telephone service from a telephone company, or other persons living or residing with the subscribing person.

[48-1003C, added 2007, ch. 203, sec. 1, p. 627.]

48-1004. TELEPHONE SOLICITOR DUTIES. (1) Telephone solicitors shall:

(a) Register with the attorney general at least ten (10) days prior to conducting business in Idaho. All registrations shall be valid for a period of one (1) year from the effective date of the registration. Any information reported in the application which has changed during the year shall be reported within two (2) weeks of such change to the attorney general and shall be included in an amended registration form filed at the time the telephone solicitor renews his registration. Registrations may be renewed annually by applying to the attorney general and paying a registration renewal fee;

(b) File with the attorney general an irrevocable consent appointing the attorney general as an agent to receive civil process in any action, suit, or proceeding brought under this chapter;

(c) Provide his registration number to any purchaser who requests the registration number;

(d) Orally inform the purchaser at the time the purchase is completed of his right to cancel as provided in subsection [48-1004\(2\)](#), Idaho Code, and state the telephone solicitor's registration number issued by the attorney general;

(e) Provide accurate and complete information when making a registration application and possess and maintain a valid registration as required in this chapter; and

(f) Give the full street address, including the telephone number, of the telephone solicitor if a sale or purchase is completed.

(2) Unless the purchaser has an unqualified right to return the goods or cancel the services and receive a full refund, the telephone solicitor shall send a written confirmation to the purchaser, which shall contain the following statement in ten (10) point bold face type, which sets forth a purchaser's right to cancel any agreement made pursuant to a telephone solicitation under this section:

NOTICE OF CANCELLATION

You may cancel this transaction, without any penalty or obligation whatsoever, within three business days of the date in which you receive this written confirmation.

If you cancel, all payments or other consideration which may have already been made by you will be returned within ten business days following receipt by the telephone solicitor of your cancellation notice.

If you cancel, you must return the goods to the telephone solicitor at the address listed below and at the telephone solicitor's risk and expense within twenty-one days of the date you receive back from the telephone solicitor the payments or consideration you have already made.

To cancel this transaction, deposit in the mail or deliver a signed and dated copy of this cancellation notice or any other written notice to(Name of telephone solicitor)....., at(Address of seller's place of business)..... not later than midnight of the third business day after which you received this notice.

I hereby cancel this transaction.

(Date)

(Buyer's signature)

[48-1004, added 1992, ch. 27, sec. 1, p. 85.]

48-1005. EXEMPTIONS. (1) The following telephone solicitors are exempt from the provisions of section [48-1004](#), Idaho Code:

(a) A person engaging in telephone solicitations where:

- (i) The solicitation is an isolated transaction and not done in the course of a pattern of repeated transactions of like nature; or
- (ii) Less than sixty percent (60%) of such person's prior year's sales were made as a result of telephone solicitations as defined in this chapter.

(b) A person making a telephone solicitation where the purchaser contacted has previously purchased goods or services from the person or the business entity for which the person is calling.

(c) A person making a telephone solicitation:

- (i) Without the intent to make or obtain provisional acceptance of a purchase during the telephone solicitation; and
- (ii) Who only arranges for the major sales presentation to be made at a later face-to-face meeting between the person and the purchaser, and the later face-to-face meeting is not for the purpose of collecting the payment or delivering any item purchased.

(d) A person whose business is licensed by any federal or state of Idaho governmental agency, except the secretary of state office, which has the power to revoke any license issued by the agency.

(e) A person making a telephone solicitation solely for purposes of selling a subscription to or advertising in a newspaper or telephone directory of general circulation.

(f) A person making a telephone solicitation solely for purposes of selling a magazine, periodical, book, or musical or video recording:

- (i) Under which the telephone solicitor provides the purchaser with a form which the purchaser may use to instruct the telephone solicitor not to ship the merchandise; and
- (ii) Which complies with the federal trade commission's "use of negative option plans by sellers in commerce rule," 16 CFR 425, regulation concerning "use of negative option plans by sellers in commerce" or a continuity plan, subscription arrangement, series

arrangement or single purchase under which the telephone solicitor ships goods to a purchaser who has consented in advance to receive such goods and the purchaser is given the opportunity to review goods for at least seven (7) days and to receive a full refund for return of undamaged goods.

(g) A person who has at least one (1) business location in the state under the same name as that used in connection with telephone solicitations and ninety percent (90%) of the person's business involves the purchaser's obtaining services and products at the person's business location.

(h) An issuer or subsidiary of an issuer that has a class of securities which is subject to section 12 of the securities exchange act of 1934 (15 USC sec. 781) and which is either registered or exempt from registration under paragraphs (A), (B), (C), (E), (F), (G) or (H) of subsection (g) (2) of that section.

(i) A person who solicits sales by periodically publishing and delivering a catalog of the person's merchandise to purchasers if the catalog:

- (i) Contains a written description or illustration of each item offered for sale;
- (ii) Includes the business address or home office address of the telephone solicitor;
- (iii) Includes at least twenty-four (24) pages of written material and illustrations and are distributed in more than one state; and
- (iv) Has an annual circulation by mailing of not less than two hundred fifty thousand (250,000).

(2) In any action, suit, or proceeding to enforce the provisions of this chapter, the burden of proving an exemption is upon the person claiming it.

[48-1005, added 1992, ch. 27, sec. 1, p. 86; am. 1993, ch. 156, sec. 1, p. 400.]

48-1006. AUTHORITY OF THE ATTORNEY GENERAL AND DISTRICT COURT. (1) The attorney general and the district court shall have the same authority in enforcing and carrying out the provisions of this chapter as is granted the attorney general and district courts under the Idaho consumer protection act, [chapter 6, title 48](#), Idaho Code.

(2) All penalties, costs and fees received or recovered by the attorney general shall be remitted to the consumer protection account and expended pursuant to subsection (5) of section [48-606](#), Idaho Code.

(3) The attorney general shall also have the following authority:

- (a) To require the registering telephone solicitor to submit information necessary to assist the attorney general in enforcing the provisions of this section;
- (b) To require each registering telephone solicitor to remit a registration fee of fifty dollars (\$50.00) or a registration renewal fee of twenty-five dollars (\$25.00);
- (c) To send to each registrant a certificate or other appropriate document demonstrating registration compliance which shall be prominently posted in a publicly accessible place at the telephone solicitor's principal business location; and
- (d) To accept service for those telephone solicitors who are required to register and appoint the attorney general as agent to receive civil process. Service may be effected by leaving a copy of the summons and

complaint in the office of the attorney general, but it is not effective and complete until five (5) days after:

- (i) The plaintiff forthwith sends notice of the service and a copy of the summons and complaint by registered mail to the telephone solicitor at its last address on file with the attorney general; and
- (ii) The plaintiff files an affidavit of compliance with the provisions of this section with the district court.

[48-1006, added 1992, ch. 27, sec. 1, p. 87.]

48-1007. PRIVATE CAUSES OF ACTION AND REMEDIES. (1) Any person who purchases goods or services pursuant to a telephone solicitation and thereby suffers damages as a result of any act, conduct, or practice declared unlawful in this chapter shall have the same rights and remedies in seeking and obtaining redress under this chapter as those granted under the Idaho consumer protection act, [chapter 6, title 48](#), Idaho Code.

(2) If a telephone solicitor violates any applicable provision of this chapter, any contract of sale or purchase is null and void and unenforceable.

(3) If a telephone solicitor fails to deliver the goods or services contracted for, pursuant to the federal trade commission's "mail order merchandise rule," 16 CFR 435, the contract to purchase is null and void.

(4) Any contract, agreement to purchase, or written confirmation executed by a purchaser which purports to waive any of the purchaser's rights under this chapter is against public policy and shall be null and void and unenforceable.

(5) The remedies provided for in this chapter are not exclusive, and shall be in addition to any other procedures or remedies for any violation or conduct provided for in any other law.

[48-1007, added 1992, ch. 27, sec. 1, p. 88.]

48-1008. LIABILITY OF MINORS. (1) Any minor who purchases goods or services pursuant to any telephone solicitation may disaffirm the purchase within a reasonable time after the purchase is made.

(2) No parent or legal guardian, having legal custody of a minor who is a purchaser pursuant to a telephone solicitation, shall be liable to a telephone solicitor for the purchase of goods or services pursuant to any telephone solicitation.

[48-1008, added 1992, ch. 27, sec. 1, p. 88.]

48-1009. CONSUMER NOTIFICATION -- RULE MAKING BY THE IDAHO PUBLIC UTILITIES COMMISSION. (1) Telephone corporations providing basic local exchange service, as defined in section [62-603](#), Idaho Code, shall inform customers of the provisions of this chapter. Publication of such notification in an annual insert in a billing statement mailed to customers or by conspicuous publication in the consumer information pages of local telephone directories shall relieve telephone corporations of any and all liability under this chapter to purchasers or others claiming to have suffered harm from telephone solicitors or by operation of the provisions of this chapter.

(2) The public utilities commission shall by rule prescribe the form of such notice.

[48-1009, added 1992, ch. 27, sec. 1, p. 88.]

48-1010. LIMITATION OF ACTION. (1) No private action may be brought under the provisions of this chapter more than two (2) years after the cause of action accrues.

(2) A cause of action shall be deemed to have accrued when the party bringing an action under the provisions of this chapter knows or in the exercise of reasonable care should have known about the violation of the provisions of this chapter.

[48-1010, added 1992, ch. 27, sec. 1, p. 89.]