

TITLE 48
MONOPOLIES AND TRADE PRACTICES

CHAPTER 11
IDAHO PAY-PER-TELEPHONE CALL ACT

48-1101. LEGISLATIVE FINDINGS AND INTENT. (1) The use of pay-per-telephone call services for commercial solicitation is rapidly increasing. This form of communication offers unique benefits, but also entails special risks and the potential for abuse. Many consumers of goods and services have suffered serious losses because of misrepresentations and failures to disclose material facts. For the general welfare of the public and in order to protect the integrity of the pay-per-telephone call service 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 information providers by requiring adequate disclosure. The provisions of this chapter are remedial, and shall be construed and applied liberally to accomplish these purposes.

(3) This chapter shall be known and may be cited as the "Idaho Pay-Per-Telephone Call Act."

[48-1101, added 1992, ch. 29, sec. 1, p. 90.]

48-1102. DEFINITIONS. In this chapter:

(1) "Adult entertainment pay-per-telephone call" means any pay-per-telephone call service that is of a sexually prurient nature. For the purpose of this section, sexually prurient is any comment, request, suggestion, proposal, image, or other communication that, in context, is obscene, lewd, lascivious, or indecent.

(2) "Information provider" means any person, company, or corporation that controls the content of a pay-per-telephone call service. Any telephone corporation which transmits pay-per-telephone call service but does not control the content of the information transmitted is not included within this definition.

(3) "Pay-per-telephone call service" means any telecommunications service which permits simultaneous calling by a number of callers to a single telephone number and for which the calling party is assessed, by virtue of completing the call, a charge that is not dependent on the existence of a presubscription or comparable agreement and for which the caller pays a per-call or per-time-interval charge that is greater than, or in addition to, the charge for transmission of the call.

(4) "Presubscription or comparable agreement" means an agreement to purchase any pay-per-telephone call service and is evidenced by:

(a) A written contractual agreement between an information provider and a legally competent person that is executed for the sole purpose of arranging purchase of pay-per-telephone call services and is separate or easily severable from any promotions or inducements, and in which:

(i) The information provider clearly and conspicuously discloses to the consumer all material terms and conditions associated with the use of the service, including the information provider's name and address, a business telephone number which the company may use

to obtain additional information or to register a complaint, and the rates of service;

(ii) The information provider agrees to notify the consumer at least one (1) billing cycle in advance of any future rate changes;

(iii) The consumer agrees to use the services on the terms and conditions disclosed by the information provider; and

(iv) The information provider requires the use of an identification number or other means to prevent unauthorized access to the service by the nonsubscribers; or

(b) Disclosure of a pre-existing credit, prepaid account, debit, charge, or calling card number, along with authorization to bill that number, provided that the card:

(i) Is subject to the dispute resolution procedures of the federal truth-in-lending and fair credit reporting acts;

(ii) Has, upon request or application, been delivered to the person to be billed prior to assessment of charges; and

(iii) Does not operate to assess charges through automatic number identification.

(5) "Telephone corporation" means any person or corporation that provides basic local exchange service or message telecommunication service.

[48-1102, added 1992, ch. 29, sec. 1, p. 91; am. 1997, ch. 75, sec. 2, p. 156.]

48-1103. PREAMBLE MESSAGE. (1) An information provider that offers pay-per-telephone call services in this state shall include at the beginning of its service a preamble message. No preamble message shall be required for pay-per-telephone call service for which the total charge for such service is two dollars (\$2.00) or less.

(2) The preamble message shall be clearly understandable and audible and state the cost of the call. The preamble must disclose all per-call charges. If the call is billed on a usage sensitive basis, the preamble must state all rates, by minute or other unit of time, any minimum charges and the total cost for calls to that service if the duration of the service can be determined.

(3) The preamble must state the name of the information provider and accurately describe the information, product, or service that the caller will receive for the fee.

(4) The preamble must inform the caller that billing will begin only after a specific identified event following the disclosure message, such as a signal tone, and must provide a reasonable opportunity for the caller to disconnect before that event.

(5) Any preamble message associated with a pay-per-telephone call service that is aimed at or likely to be of interest to children under the age of eighteen (18) must contain a statement that the caller should hang up unless he has parental permission.

(6) A caller may be provided the means to bypass the preamble message on subsequent calls, provided that the caller has sole control of that capability, except that any bypass device shall be disabled for a period of thirty (30) days following the effective date of a price increase for the service. Instructions on how to bypass must either be at the end of the preamble message or at the end of the service.

(7) If the pay-per-telephone call service originates and terminates within local exchange areas served by the same telephone corporation within

the state of Idaho, the information provider may apply to the Idaho attorney general for permission to modify the preamble message. The attorney general may grant such permission if the attorney general is satisfied that the modified message will adequately disclose sufficient material facts which will safeguard the public against deceit and financial hardship. Such decision shall be final and nonappealable.

[48-1103, added 1992, ch. 29, sec. 1, p. 91.]

48-1104. ADVERTISEMENTS. (1) If the total charge for the pay-per-telephone call service is more than two dollars (\$2.00), advertisements by information providers for pay-per-telephone call services must clearly and conspicuously disclose, as that term is defined by the Idaho consumer protection act and regulations promulgated thereunder, the price or cost of the service being advertised, and contain the information required to be set forth in subsection (2) of section [48-1103](#), Idaho Code, except as provided in subsection (2) of this section.

(2) For purposes of this chapter, a listing in any section of a directory in which businesses or professions are listed alphabetically and which directory is not published more often than twice in a consecutive twelve (12) month period of time, does not constitute an advertisement. Information providers that advertise pay-per-telephone call services in the section of a directory which lists businesses by subject category, and which directory is not published more often than twice in a consecutive twelve (12) month period of time, shall conspicuously disclose in the advertisement that the service is a pay-per-telephone call service but need not disclose the price or cost of the service.

[48-1104, added 1992, ch. 29, sec. 1, p. 92; am. 1992, ch. 100, sec. 1, p. 318.]

48-1105. REMEDIES. (1) When an information provider has failed to comply with any provision of this chapter, any obligation by a consumer that may have arisen from the dialing of a pay-per-telephone call service is void and unenforceable.

(2) Any failure to comply with any provision of this chapter is an unfair and deceptive act or practice. Any person aggrieved by a violation of this chapter shall be entitled to all available remedies against the information provider, pursuant to the Idaho consumer protection act, [chapter 6, title 48](#), Idaho Code.

(3) 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 statute.

[48-1105, added 1992, ch. 29, sec. 1, p. 92.]

48-1106. AUTHORITY OF THE ATTORNEY GENERAL AND DISTRICT COURT. The attorney general and 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 court under the Idaho consumer protection act, [chapter 6, title 48](#), Idaho Code.

[48-1106, added 1992, ch. 29, sec. 1, p. 92.]

48-1107. LIMITATIONS 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.

[48-1107, added 1992, ch. 29, sec. 1, p. 92.]

48-1108. ADULT ENTERTAINMENT PAY-PER-TELEPHONE CALLS. (1) Except as provided in subsection (2) of this section, no charge of any nature for any adult entertainment pay-per-telephone call is valid and enforceable unless the consumer has first entered into a presubscription or comparable agreement to purchase the adult entertainment pay-per-telephone call. Any adult entertainment pay-per-telephone call charges incurred absent a presubscription or comparable agreement are void and unenforceable.

(2) The second and successive time a consumer receives a telephone bill that includes charges for an adult entertainment pay-per-telephone call, the charges, if incurred absent a presubscription or comparable agreement, are void and unenforceable if:

(a) The charges were incurred as the result of third-party fraud; or

(b) The bill is sent to the consumer by a telephone corporation as a holder in due course and, upon written notification to the applicable telephone corporation of the disputed charge, the telephone corporation is able to recourse the bill back to the information provider or its agent.

(3) Any information provider which, on its own, or through an agent, assign, or successor who seeks to collect a charge of any nature for an adult entertainment pay-per-telephone call that does not have a presubscription or comparable agreement evidencing the consumer's agreement to purchase the call, has committed an unfair, unlawful and deceptive act or practice in trade and commerce for purposes of applying the Idaho consumer protection act, [chapter 6, title 48](#), Idaho Code.

[48-1108, added 1997, ch. 75, sec. 3, p. 157.]