

**[Idaho Code Ann. §§ 48-601 through 603, 603C, 604 through 619.]**

§ 48-601. Short title and purpose: Idaho Consumer Protection Act

This act shall be known and may be cited as the “Idaho consumer protection act”. The purpose of this act is to protect both consumers and businesses against unfair methods of competition and unfair or deceptive acts and practices in the conduct of trade or commerce, and to provide efficient and economical procedures to secure such protection. It is the intention of the legislature that this chapter be remedial and be so construed.

§ 48-602. Definitions: Idaho Consumer Protection Act

As used in this act:

- (1) “Person” means natural persons, corporations both foreign and domestic, trusts, partnerships both limited and general, incorporated or unincorporated associations, companies, trusts, business entities, and any other legal entity, or any other group associated in fact although not a legal entity or any agent, assignee, heir, employee, representative or servant thereof.
- (2) “Trade” and “commerce” mean the advertising, offering for sale, selling, leasing, renting, collecting debts arising out of the sale or lease of goods or services or distributing goods or services, either to or from locations within the state of Idaho, or directly or indirectly affecting the people of this state.
- (3) “Documentary material” means the original or a copy of any book, record, report, memorandum, paper, communication, tabulation, map, chart, photograph, audio and/or visual recording, mechanical, photographic, or electronic transcription or other tangible document or recording.
- (4) “Examination” of documentary material shall include the inspection, study, or copying of any such material, and the taking of testimony under oath or acknowledgment in respect of any such documentary material or copy thereof.
- (5) “Appropriate trade premises,” mean premises at which either the owner or seller normally carries on a business, or where goods are normally offered or exposed for sale in the course of a business carried on at those premises.
- (6) “Goods” mean any property, tangible or intangible, real, personal or mixed, and any other article, commodity, or thing of value wherever situate, including certificates or coupons exchangeable for such goods.
- (7) “Services” mean work, labor or any other act or practice provided or performed by a seller to or on behalf of a consumer.

(8) “Actions or transactions permitted under laws administered by a regulatory body or officer” mean specific acts, practices or transactions authorized by a regulatory body or officer pursuant to a contract, rule or regulation, or other properly issued order, directive or resolution.

(9) “Regulatory body or officer” means any person or governmental entity with authority to act pursuant to state of Idaho or federal statute.

## § 48-603. Unfair methods and practices: Idaho Consumer Protection Act

The following unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce are hereby declared to be unlawful, where a person knows, or in the exercise of due care should know, that he has in the past, or is:

- (1) Passing off goods or services as those of another;
- (2) Causing likelihood of confusion or of misunderstanding as to the source, sponsorship, approval, or certification of goods or services;
- (3) Causing likelihood of confusion or of misunderstanding as to affiliation, connection, or association with, or certification by, another;
- (4) Using deceptive representations or designations of geographic origin in connection with goods or services;
- (5) Representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities that they do not have or that a person has a sponsorship, approval, status, affiliation, connection, qualifications or license that he does not have;
- (6) Representing that goods are original or new if they are deteriorated, altered, reconditioned, reclaimed, used, or secondhand;
- (7) Representing that goods or services are of a particular standard, quality, or grade, or that goods are of a particular style or model, if they are of another;
- (8) Disparaging the goods, services, or business of another by false or misleading representation of fact;
- (9) Advertising goods or services with intent not to sell them as advertised;
- (10) Advertising goods or services with intent not to supply reasonably expectable public demand, unless the advertisement discloses a limitation of quantity;
- (11) Making false or misleading statements of fact concerning the reasons for, existence of, or amounts of price reductions;

- (12) Obtaining the signature of the buyer to a contract when it contains blank spaces to be filled in after it has been signed;
- (13) Failing to deliver to the consumer at the time of the consumer's signature a legible copy of the contract or of any other document which the seller or lender has required or requested the buyer to sign, and which he has signed, during or after the contract negotiation;
- (14) Making false or misleading statements of fact concerning the age, extent of use, or mileage of any goods;
- (15) Promising or offering to pay, credit or allow to any buyer or lessee, any compensation or reward in consideration of his giving to the seller or lessor the names of prospective purchasers or lessees, or otherwise aiding the seller or lessor in making a sale or lease to another person, if the earning of the rebate, discount or other value is contingent upon the occurrence of an event subsequent to the time the buyer or lessee agrees to buy or lease;
- (16) Representing that services, replacements or repairs are needed if they are not needed, or providing services, replacements or repairs that are not needed;
- (17) Engaging in any act or practice which is otherwise misleading, false, or deceptive to the consumer;
- (18) Engaging in any unconscionable method, act or practice in the conduct of trade or commerce, as provided in section 48-603C, Idaho Code, provided, however, that the provisions of this subsection shall not apply to a regulated lender as that term is defined in section 28-41-301, Idaho Code;
- (19) Taking advantage of a disaster or emergency declared by the governor under chapter 10, title 46, Idaho Code, or the president of the United States under the provisions of the disaster relief act of 1974, 42 U.S.C. section 5121 et seq., by selling or offering to sell to the ultimate consumer fuel or food, pharmaceuticals, or water for human consumption at an exorbitant or excessive price; provided however, this subsection shall apply only to the location and for the duration of the declaration of emergency. In determining whether a price is exorbitant or excessive, the court shall take into consideration the facts and circumstances including, but not limited to:
- (a) A comparison between the price paid by the alleged violator for the fuel, food, pharmaceuticals, or water and the price for which the alleged violator sold those same items to the ultimate consumer immediately before and after the period specified by the disaster or emergency declaration;
  - (b) Additional costs of doing business incurred by the alleged violator because of the disaster or emergency;
  - (c) The duration of the disaster or emergency declaration.

Notwithstanding anything to the contrary contained elsewhere in the act, no private cause of action exists under this subsection.

## [§ 48-603C. Unconscionable methods, acts or practices: Idaho Consumer Protection Act](#)

(1) Any unconscionable method, act or practice in the conduct of any trade or commerce violates the provisions of this chapter whether it occurs before, during, or after the conduct of the trade or commerce.

(2) In determining whether a method, act or practice is unconscionable, the following circumstances shall be taken into consideration by the court:

(a) Whether the alleged violator knowingly or with reason to know, took advantage of a consumer reasonably unable to protect his interest because of physical infirmity, ignorance, illiteracy, inability to understand the language of the agreement or similar factor;

(b) Whether, at the time the consumer transaction was entered into, the alleged violator knew or had reason to know that the price grossly exceeded the price at which similar goods or services were readily available in similar transactions by similar persons, although price alone is insufficient to prove an unconscionable method, act or practice;

(c) Whether the alleged violator knowingly or with reason to know, induced the consumer to enter into a transaction that was excessively one-sided in favor of the alleged violator;

(d) Whether the sales conduct or pattern of sales conduct would outrage or offend the public conscience, as determined by the court.

#### § 48-604. Intent of legislature – attorney general to make rules and regulations: Idaho Consumer Protection Act

(1) It is the intent of the legislature that in construing this act due consideration and great weight shall be given to the interpretation of the federal trade commission and the federal courts relating to section 5(a)(1) of the federal trade commission act (15 U.S.C. 45(a)(1)), as from time to time amended; and

(2) The attorney general may make rules and regulations interpreting the provisions of this act. Such rules and regulations shall not be inconsistent with the rules, regulations and decisions of the federal trade commission and the federal courts in interpreting the provisions of section 5(a)(1) of the federal trade commission act (15 U.S.C. 45(a)(1)), as from time to time amended. Rules and regulations shall be promulgated as provided in chapter 52, title 67, Idaho Code.

#### § 48-605. Exceptions to chapter: Idaho Consumer Protection Act

Nothing in this act shall apply to:

(1) Actions or transactions permitted under laws administered by the state public utility commission or other regulatory body or officer acting under statutory authority of this state or the United States.

(2) Acts done by publishers, broadcasters, printers, retailers, or their employees, in the publication or dissemination of an advertisement in good faith on the basis of information or material supplied by others and without knowledge or reason to know of the misleading or deceptive character of such advertisement or the information or material furnished.

(3) Persons subject to chapter 13, title 41, Idaho Code (sections 41-1301 through 41-1327), defining, and providing for the determination by the director of the department of insurance of unfair methods of competition or unfair or deceptive acts or practices in the business of insurance.

### § 48-606. Proceedings by attorney general: Idaho Consumer Protection Act

(1) Whenever the attorney general has reason to believe that any person is using, has used, or is about to use any method, act or practice declared by this chapter to be unlawful, and that proceedings would be in the public interest, he may bring an action in the name of the state against such person:

- (a) To obtain a declaratory judgment that a method, act or practice violates the provisions of this chapter;
- (b) To enjoin any method, act or practice that violates the provisions of this chapter by issuance of a temporary restraining order or preliminary or permanent injunction, upon the giving of appropriate notice to that person as provided by the Idaho rules of civil procedure;
- (c) To recover on behalf of consumers actual damages or restitution of money, property or other things received from such consumers in connection with a violation of the provisions of this chapter;
- (d) To order specific performance by the violator;
- (e) To recover from the alleged violator civil penalties of up to five thousand dollars (\$5,000) per violation for violation of the provisions of this chapter; and
- (f) To recover from the alleged violator reasonable expenses, investigative costs and attorney's fees incurred by the attorney general.

(2) The action may be brought in the district court of the county in which such person resides or has his principal place of business, or with consent of the parties, may be brought in the district court of Ada county. If the person does not reside in or have a principal place of business in this state, the action may be brought in any district court in this state. The said courts are authorized to issue temporary restraining orders or preliminary or permanent injunctions to restrain and prevent violations of the provisions of this chapter, and such injunctions shall be issued without bond.

(3) Unless the attorney general finds in writing that the purposes of this chapter will be substantially and materially impaired by delay in instituting legal proceedings, he shall, before initiating any legal proceedings as provided in this section, give notice in writing that such proceedings are contemplated to the person against whom proceedings are contemplated and allow such person a reasonable opportunity to appear before the attorney general and execute an assurance of voluntary compliance or a consent judgment as in this chapter provided.

(4) In lieu of instigating or continuing an action or proceeding, the attorney general may accept a consent judgment with respect to any act or practice alleged to be a violation of the provisions of this chapter, and it may include a stipulation for the payment by such person of reasonable expenses, investigative costs and attorney's fees incurred by the attorney general. The consent judgment may also include a stipulation for civil penalties to be paid, not in excess of five thousand dollars (\$5,000) per alleged violation; a stipulation to pay to consumers actual damages or to allow for restitution of money, property or other things received from such consumers in connection with a violation of the provisions of this chapter; and/or a stipulation for specific performance. Before any consent judgment entered into pursuant to this section shall be effective, it must be approved by the district court and an entry made thereof in the manner required for making an entry of

judgment. Once such approval is received, any breach of the conditions of such consent judgment shall be treated as a violation of a court order, and shall be subject to all penalties provided by law therefor, including the penalties set forth in section 48-615, Idaho Code.

(5) All penalties, costs and fees recovered by the attorney general shall be remitted to the consumer protection fund which is hereby created in the state treasury. Moneys in the fund may be expended pursuant to legislative appropriation and shall be used for the furtherance of the attorney general's duties and activities under this chapter. At the beginning of each fiscal year, those moneys in the consumer protection fund which exceed the current year's appropriation plus any residual encumbrances made against prior years' appropriations by fifty percent (50%) or more shall be transferred to the general fund.

(6) Any moneys collected by the attorney general as trustee for distributions to injured consumers shall be deposited in the state treasury until such time as payment is made to an individual or individuals for purposes of restitution or pursuant to a court approved cy pres distribution.

### § 48-607. Additional relief by court authorized: Idaho Consumer Protection Act

In any action brought by the attorney general, wherein the state prevails, the court shall, in addition to the relief granted pursuant to section 48-606, Idaho Code, award reasonable costs, investigative expenses and attorney's fees to the attorney general. These costs and fees shall be remitted to the consumer protection account created in section 48-606, Idaho Code, and shall be used for the furtherance of the attorney general's duties and activities under this chapter. In addition, the court may:

- (1) Make such orders or judgments as may be necessary to prevent the use or employment by a person of any method, act or practice declared to be a violation of the provisions of this chapter;
- (2) Make such orders or judgments as may be necessary to compensate any consumers for actual damages sustained or to provide for restitution to any consumers of money, property or other things received from such consumers in connection with a violation of the provisions of this chapter;
- (3) Make such orders or judgments as may be necessary to carry out a transaction in accordance with consumers' reasonable expectations;
- (4) Appoint a master, receiver or escrow agent to oversee assets or order sequestration of assets whenever it shall appear that the defendant threatens or is about to remove, conceal or dispose of property to the damage of persons to whom restoration would be made under this subsection and assess the expenses of a master, receiver or escrow agent against the defendant;
- (5) Revoke any license or certificate authorizing that person to engage in business in this state;
- (6) Enjoin any person from engaging in business in this state; and/or
- (7) Grant other appropriate relief.

§ 48-608. Loss from purchase or lease – actual and punitive damages: Idaho  
Consumer Protection Act

(1) Any person who purchases or leases goods or services and thereby suffers any ascertainable loss of money or property, real or personal, as a result of the use or employment by another person of a method, act or practice declared unlawful by this chapter, may treat any agreement incident thereto as voidable or, in the alternative, may bring an action to recover actual damages or one thousand dollars (\$1,000), whichever is the greater; provided, however, that in the case of a class action, the class may bring an action for actual damages or a total for the class that may not exceed one thousand dollars (\$1,000), whichever is the greater. Any such person or class may also seek restitution, an order enjoining the use or employment of methods, acts or practices declared unlawful under this chapter and any other appropriate relief which the court in its discretion may deem just and necessary. The court may, in its discretion, award punitive damages and may provide such equitable relief as it deems necessary or proper in cases of repeated or flagrant violations.

(2) An elderly person or a disabled person who brings an action under subsection (1) of this section shall, in addition to the remedies available under subsection (1) of this section, recover from the offending party an enhanced penalty of fifteen thousand dollars (\$15,000) or treble the actual damages, whichever is greater.

(a) In order to recover the enhanced penalty, the court must find that the offending party knew or should have known that his conduct was perpetrated against an elderly or disabled person and that his conduct caused one (1) of the following:

(i) Loss or encumbrance of the elderly or disabled person's primary residence;

(ii) Loss of more than twenty-five percent (25%) of the elderly or disabled person's principal monthly income;

(iii) Loss of more than twenty-five percent (25%) of the funds belonging to the elderly or disabled person set aside by the elderly or disabled person for retirement or for personal or family care or maintenance;

(iv) Loss of more than twenty-five percent (25%) of the monthly payments that the elderly or disabled person receives under a pension or retirement plan; or

(v) Loss of assets essential to the health or welfare of the elderly or disabled person.

(b) If the court orders restitution under subsection (1) of this section for a pecuniary or monetary loss suffered by an elderly or disabled person, the court shall require that the restitution be paid by the offending party before he pays the enhanced penalty imposed by this subsection.

(c) In this subsection:

(i) "Disabled person" means a person who has an impairment of a physical, mental or emotional nature that substantially limits at least one (1) major life activity.

(ii) "Elderly person" means a person who is at least sixty-two (62) years of age.

(iii) "Major life activity" means self-care, walking, seeing, hearing, speaking, breathing, learning, performing manual tasks or being able to be gainfully employed.

(3) An action brought under subsection (1) of this section may be brought in the county in which the person against whom it is brought resides, has his principal place of business, or is doing business, or in the county where the transaction or any substantial portion thereof occurred.

(4) Upon commencement of any action brought under this section, the clerk of the court shall, for informational purposes only, mail a copy of the complaint or other initial pleading to the attorney general and,



upon entry of any judgment or decree in the action, shall mail a copy of such judgment or decree to the attorney general.

(5) Costs shall be allowed to the prevailing party unless the court otherwise directs. In any action brought by a person under this section, the court shall award, in addition to the relief provided in this section, reasonable attorney's fees to the plaintiff if he prevails. The court in its discretion may award attorney's fees to a prevailing defendant if it finds that the plaintiff's action is spurious or brought for harassment purposes only.

(6) Any permanent injunction, judgment or order of the court made under section 48-606(1) through (3) or section 48-607, Idaho Code, shall be admissible as evidence in an action brought under this section that the respondent used or employed a method, act or practice declared unlawful by this chapter.

### § 48-610. Voluntary compliance – district court approval: Idaho Consumer Protection Act

(1) In the administration of this chapter, the attorney general may accept an assurance of voluntary compliance with respect to any method, act or practice deemed to be violative of the provisions of this chapter from any person who has engaged or was about to engage in such method, act or practice. Any such assurance shall be in writing and be filed with and subject to the approval of the district court of the county in which the alleged violator resides or has his principal place of business or of the district court of Ada County and shall be deemed an order of the court enforceable by contempt proceedings.

(2) Such assurance of voluntary compliance shall not be considered an admission of violation for any purpose.

(3) The assurance of voluntary compliance shall provide for the discontinuance by the person entering into the same of any method, act or practice alleged to be a violation of this chapter, and it may include a stipulation for the payment by such person of reasonable expenses, investigative costs and attorney's fees incurred by the attorney general. The recovered expenses, costs and fees shall be remitted to the consumer protection account created in section 48-606, Idaho Code, and shall be used for the furtherance of the attorney general's duties and activities under this chapter. The assurance may also include: a stipulation for payment to consumers of actual damages or for restitution of money, property, or other things received from consumers in connection with a violation of the provisions of this chapter; and a stipulation for specific performance.

(4) A violation of such assurance of voluntary compliance shall prima facie establish that the person subject thereto knows, or in the exercise of due care should know, that he has in the past violated or is violating the provisions of this chapter.

(5) Matters thus closed may at any time be reopened by the attorney general for further proceedings in the public interest, pursuant to section 48-606, Idaho Code.

### § 48-611. Investigative demand by attorney general – report required: Idaho Consumer Protection Act



(1) When the attorney general has reason to believe that a person has engaged in, is engaging in, or is about to engage in any act or practice declared to be unlawful by this act, he may execute in writing and cause to be served upon any person who is believed to have information, documentary material or physical evidence relevant to the alleged or suspected violation, an investigative demand requiring such person to furnish a report in writing setting forth the relevant facts and circumstances of which he has knowledge, or to appear and testify or to produce relevant documentary material or physical evidence for examination, at such reasonable time and place as may be stated in the investigative demand, concerning the advertisement, sale or offering for sale of any goods or services or the conduct of any trade or commerce that is the subject matter of the investigation. The return date in said investigative demand shall be not less than twenty (20) days after serving of the demand.

(2) At any time before the return date specified in an investigative demand, or within twenty (20) days after the demand has been served, whichever period is shorter, a petition to extend the return date, or to modify or set aside the demand, stating good cause, may be filed in the district court of the county where the person served with the demand resides or has his principal place of business or in the district court in Ada County.

#### § 48-612. Additional powers of attorney general: Idaho Consumer Protection Act

To accomplish the objectives and to carry out the duties prescribed by this chapter, the attorney general, in addition to other powers conferred upon him by this chapter, may issue subpoenas to any person and conduct hearings in aid of any investigation or inquiry; provided that information obtained pursuant to the powers conferred in this chapter shall be subject to disclosure according to chapter 1, title 74, Idaho Code.

#### § 48-613. Service of notice: Idaho Consumer Protection Act

Service of any notice, demand or subpoena under this act shall be made personally within this state, but if such cannot be obtained, substituted service therefor may be made in the following manner:

(1) Personal service thereof without this state; or

(2) The mailing thereof by registered or certified mail to the last known place of business, residence or abode within or without this state or such person for whom the same is intended; or

(3) As to any person other than a natural person, in the manner provided in the Idaho rules of civil procedure as if a complaint which institutes a civil proceeding had been filed.

#### § 48-614. Failure to obey attorney general – application to district court: Idaho Consumer Protection Act

(1) If any person fails or refuses to file any statement or report, or obey any subpoena or investigative demand issued by the attorney general, the attorney general may, after notice, apply to a district court of the county in which the person resides or has a principal place of business, or if the person does not reside in or have a

principal place of business in this state, the attorney general may apply to any district court in this state and, after hearing thereon, request an order:

- (a) Ordering such person to file such statement or report, or to comply with the subpoena or investigative demand issued by the attorney general;
- (b) Granting injunctive relief to restrain the person from engaging in the advertising or sale of any merchandise or the conduct of any trade or commerce that is involved in the alleged or suspected violation; and
- (c) Granting such other relief as may be required, until the person files the statement or report, or obeys the subpoena or investigative demand.

(2) The court shall award the prevailing party reasonable expenses and attorney fees incurred in obtaining an order under the provisions of this section if the court finds that the attorney general's request for an order under this section or a person's resistance to filing any statement or report, or obeying any subpoena or investigative demand, was without a reasonable basis in fact or law.

(3) Any disobedience of any final order entered under the provisions of this section by any court shall be punished as a contempt thereof. Contempt penalties sued for and recovered by the attorney general shall be remitted to the consumer protection account created in section 48-606, Idaho Code, and shall be used for the furtherance of the attorney general's duties and activities under the provisions of this chapter.

#### § 48-615. Violation of injunction – civil penalty: Idaho Consumer Protection Act

Any person who violates the terms of an injunction issued or consent order entered into pursuant to section 48-606, Idaho Code, or an order entered into pursuant to section 48-614, Idaho Code, shall forfeit and pay to the state a civil penalty of not more than ten thousand dollars (\$10,000) per violation, the amount of the penalty to be determined by the district court issuing the injunction. For the purposes of this section, the district court issuing an injunction shall retain jurisdiction, and the cause shall be continued, and in such cases the attorney general acting in the name of the state may petition for recovery of civil penalties. Said civil penalties sued for and recovered by the attorney general shall be remitted to the consumer protection account created in section 48-606, Idaho Code, and shall be used for the furtherance of the attorney general's duties and activities under the provisions of this chapter.

#### § 48-616. Forfeiture of corporate franchise: Idaho Consumer Protection Act

Upon petition by the attorney general, the district court of the county in which the principal place of business of the corporation is located may, in its discretion, order the dissolution or suspension or forfeiture of franchise of any corporation which violates the terms of any injunction issued under section 48-606, Idaho Code.

#### § 48-617. Local law enforcement officials – duties: Idaho Consumer Protection Act

It shall be the duty of local law enforcement officials to provide the attorney general such assistance as the attorney general may request in the investigation, commencement and prosecution of actions pursuant to this chapter.

#### § 48-618. Construction of chapter: Idaho Consumer Protection Act

This act is to be construed uniformly with federal law and regulations. In any action instituted under this act it shall be an absolute defense to show the challenged practices are subject to and comply with statutes administered by the federal trade commission, or any duties, regulations or decisions interpreting such statutes.

#### § 48-619. Limitation of action: Idaho Consumer Protection Act

No private action may be brought under this act more than two (2) years after the cause of action accrues.