FOR MORE INFORMATION

ALFA International
THE GLOBAL LEGAL NETWORK

SCANLAN GRIFFITHS + ALDRIDGE
Boise, ID
Website

Kevin A. Griffiths
kag@sgaidaho.com

Naomi M. Olds
nmo@sgaidaho.com

Idaho

Does your state have its own version of the TCPA?

Yes. Idaho adopted the Idaho Telephone Solicitation Act ("ITSA") in 1992. The This was adopted alongside the "Idaho Pay-Per-Telephone Call Act" in the same session. The ITSA can be found at Idaho Code section 48-1001 *et seq*.

If so, please explain the distinction between the state's iteration of the TCPA.

The ITSA has largely tracked the TCPA's evolution since its inception, with some key differences. The ITSA does not prohibit solicitation based on time of day and does not require solicitors to maintain a company-specific "do-not-call" list. The ITSA also does not directly allow for recovery of damages by a claimant but instead requires the claimant to seek damages through the existing framework of the Idaho Consumer Protection Act (the "ICPA," discussed below). Violators of the ITSA will be subjected to civil penalties ranging from $500 (first violation) to $5,000 (third and subsequent violations).

Notably, telephone solicitors are required to register with the Idaho Attorney General for a fee, and to continue to renew this registration on an annual basis. Further, although the Idaho Attorney General was briefly tasked with establishing and maintaining a "do not call" list, in 2004 an Idaho-specific list was eliminated in favor of the Federal Trade Commission (FTC)-maintained National Do-Not-Call Registry.

Since its adoption in 1992, the ITSA has mirrored the TCPA's evolution, with the following amendments:

- In 1997, House Bill No. 152 was passed, making it unlawful to send unsolicited advertisements to fax machines.
- In 1998, Senate Bill No. 1497 was passed to add a definition for the term "unsolicited advertisements."
- In 1999, House Bill No. 138 was passed to make it illegal for a telephone solicitor to block caller ID while soliciting.
- In 2000, House Bill No. 744 was passed, further amending by clarifying the definition of a "telephone solicitation," creating a Do-Not-Call registry for Idaho residents (for a fee), establishing civil penalties if persons on the registry are contacted, and creating several exceptions.
- In 2004, House Bill No. 535 was passed. This legislation amended the ITSA in several ways. First, it permitted the recently established National Do-Not-Call Registry (maintained by the FTC) to stand in for the Idaho Do-Not-Call list. Second, there were further changes to the definition of

"established business relationship." Third, the legislation struck the fee requirement for being placed on a Do-Not-Call list.

- In 2007, House Bill 223 added a new section related to auto-dialers.
- In 2013, House Bill No. 55 was passed, amending/removing certain exceptions to the Do-Not-Call provision.

Please address state-specific consumer protection statutes that are often paired with TCPA or its state iterations and the additional elements and penalties.

The ITSA links a claimant's rights and remedies to the framework of the Idaho Consumer Protection Act ("ICPA").[i] Violation of the ITSA is an unlawful, unfair, and deceptive act or practice for purposes of the ICPA. Further, engaging in an "unfair solicitation practice" as defined under the ICPA is a violation of the ITSA.[ii]

A claimant under the ICPA who "suffers any ascertainable loss of money or property, real or personal" as a result of an unlawful method, act or practice may either (1) treat the agreement incident thereto as voidable, or (2) can sue to recover actual damages or $1,000, whichever is greater.[iii]

In addition to seeking nominal or actual damages, a claimant who is an "elderly person or a disabled person" may recover an **additional** amount equal to (1) treble actual damages, or (2) $15,000, whichever is greater.[iv] This requires the claimant to establish that the offending party knew or should have known that the unlawful conduct was perpetrated against an elderly or disabled person, and the unlawful conduct caused

- Loss or encumbrance of the elderly or disabled person's primary residence;
- Loss of more than twenty-five percent (25%) of the elderly or disabled person's principal monthly income;
- 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;
- 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
- Loss of assets essential to the health or welfare of the elderly or disabled person.[v]

What are the current best practices to comply with Idaho's iteration of the TCPA?

The ITSA has not been materially litigated in Idaho, but given the range of penalties associated with an ITSA violation, best practices include the following:

- Determine whether you qualify as a "telephone solicitor" such that you need to register with the Idaho Attorney General to lawfully conduct "telephone solicitations." This registration needs to be renewed **every year**. Failure to appropriately register can result in all contracts secured by telephone solicitation to be void *ab initio* (i.e., of no legal effect from the beginning).[vi]
- Establish internal quality assurance checks regarding the content and script of your telephone solicitations so that you can readily defend against anything that hints at an unlawful act under Idaho Code section 48-1003(1) or an unfair solicitation practice under Idaho Code section 48-603A.
- Maintain processes and procedures to ensure that the "established business relationship" time period of eighteen (18) months is tracked.[vii]

[i] I.C. § 48-1007.
[ii] I.C. § 48-1003(1)(g).
[iii] I.C. § 48-608(1).
[iv] I.C. § 48-608(2).
[v] I.C. § 48-608(2)(a)(i)-(v).
[vi] *Drug Testing Compliance Grp., LLC v. DOT Compliance Serv.*, 161 Idaho 93, 102, 383 P.3d 1263, 1272 (2016).
[vii] I.C. § 48-1003(3).