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**Attorney General**

**OFFICE OF THE ATTORNEY GENERAL**  
**2004 ANNUAL REPORT ON**  
**CONSUMER PROTECTION ACTIVITIES**



*The Attorney General enforces various consumer laws, including Idaho's Consumer Protection, Competition, Telephone Solicitation, Pay-Per-Telephone Call, and Charitable Solicitation Acts. These Acts protect consumers, businesses, and the marketplace from unfair or deceptive acts and practices. The Attorney General seeks to fulfill this charge efficiently and economically through education, mediation, and enforcement.*

*The Attorney General also enforces and defends the State's Master Settlement Agreement with the tobacco industry and has been delegated the duty of enforcing Idaho's Tobacco Master Settlement Agreement, Tobacco Master Settlement Agreement Complementary, and Prevention of Minors' Access to Tobacco Acts. The Settlement and these Acts seek to promote the public health and protect the fiscal soundness of the State.*

The Attorney General reports to the public annually regarding consumer protection activities. This report covers the calendar year 2004.

**HISTORY**

The Legislature has assigned to the Attorney General enforcement duties related to consumer protection, telephone and charitable solicitations, the Idaho No Call Law, 900-number telephone calls, tobacco, and competition issues.

In 2004, the Attorney General recovered \$5,777,643 in restitution. This equates to \$10.30 for each taxpayer dollar appropriated for consumer operations. For the past 14 years, the Attorney General has recovered more money for Idaho residents than the Legislature has appropriated from the general fund for consumer operations. Salaries and benefits of those who are primarily involved in consumer protection efforts are expected to cost taxpayers approximately \$561,061 for the 2005 fiscal year. Another \$152,100 is budgeted from the Attorney General's consumer protection account for consumer education efforts. The consumer protection account is comprised of moneys obtained through Attorney General enforcement actions.

## 2004 ACTIVITIES SUMMARY

The Attorney General recovered a record-setting \$5,777,643 for Idaho consumers (including restitution from enforcement actions) and \$528,138 in civil penalties, fees, and costs. These amounts do not include the \$22,834,498 the state received in 2004 pursuant to the Master Settlement Agreement negotiated by the Office of the Attorney General with tobacco manufacturers.

Activity this year related to consumer protection, antitrust, telemarketing, and tobacco law enforcement.

The Attorney General settled significant consumer protection cases with Fax.com, Warner Lambert Company, Ford Motor Company and wireless telephone companies. In the antitrust arena, several cases involving the award of hundreds of thousands of dollars in restitution to Idaho consumers and businesses were resolved. The year 2004 marked the Attorney General's fourth year of enforcement and administration of Idaho's No Call Law and was the second year of coordinating with the federal government's no call registry. By year's end, there were 362,061 Idaho phone numbers registered on the Attorney General's No Call List. Many citizens report receiving fewer unwanted telephone solicitations. The Attorney General undertook actions related to enforcement of Idaho's Tobacco Master Settlement Agreement and Tobacco Master Settlement Agreement Complementary Acts.

The Attorney General's Consumer Protection Unit logged 6,841 instances of consumer assistance in 2004. 4,079 contacts were consumer complaints. The remainder consisted of information received from consumers, processing requests for information and forms, and responding to inquiries about particular businesses. This number does not reflect the multitude of telephone calls and personal contacts that are not logged or tracked by the Attorney General's consumer database.

Office of the Attorney General staff educated thousands of people about consumer issues, attended fairs around the state, and worked on updating consumer information brochures. Staff attended the Eastern, Northern, Twin Falls, and Western Idaho Fairs. The Attorney General's emphasis at the fairs was prevention of identity theft. Staff distributed approximately 1,500 copies of the Attorney General's publication "Identity Theft" and spoke with several thousand Idaho residents about identity theft during the fairs.

Money from civil penalties, fees, and reimbursed costs is deposited into the consumer protection account. Funds from this account pay for the Attorney General's educational activities, pursuant to legislative appropriation. The Attorney General transferred \$746,861 in surplus funds to the General Fund at the end of Fiscal Year 2004. Prior year transfers were \$503,129 in fiscal year 2003; \$1,128,516 in fiscal year 2002; \$510,948 in fiscal year 2001; and \$700,000 in fiscal year 2000.

## APPLICABLE LAWS

In the field of consumer protection, competition, tobacco, and telephone and charitable solicitations, the Attorney General enforces, and operates pursuant to, the following Idaho statutes and rules<sup>1</sup>:

- Consumer Protection Act
- Competition Act
- Charitable Solicitation Act
- Pay-Per-Telephone Call Act
- Telephone Solicitation Act, including the Idaho No Call Law
- Tobacco Master Settlement Agreement Act
- Tobacco Master Settlement Agreement Complementary Act
- Prevention of Minors' Access to Tobacco Act
- Consumer Protection Rules
- Telephone Solicitation and Pay-Per-Telephone Call Services Rules
- Tobacco Master Settlement Agreement Complementary Act Rules

The Attorney General also enforces provisions of other consumer-related statutes, including those dealing with chain and pyramid distribution schemes. In addition, the Office of the Attorney General provides information regarding Idaho's Lemon Law and Landlord/Tenant and Mobile Home Park Acts.

## LEGISLATION

In 2004, the Attorney General did not propose legislation related to consumer protection or tobacco enforcement.

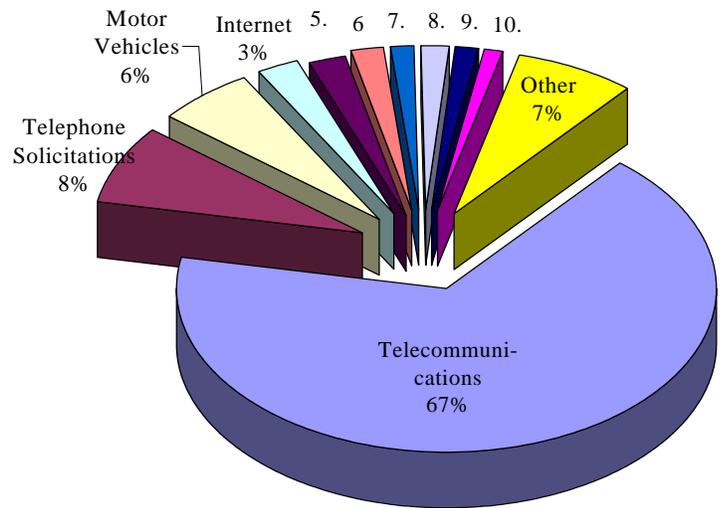
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<sup>1</sup> The listed Idaho statutes and rules are codified, respectively, as follows: Consumer Protection Act, title 48, chapter 6, Idaho Code; Competition Act, title 48, chapter 1, Idaho Code; Charitable Solicitation Act, title 48, chapter 12, Idaho Code; Pay-Per-Telephone Call Act, title 48, chapter 11, Idaho Code; Telephone Solicitation Act, title 48, chapter 10, Idaho Code; Tobacco Master Settlement Agreement Act, title 39, chapter 78, Idaho Code; Tobacco Master Settlement Agreement Complementary Act, title 39, chapter 84, Idaho Code (Supp.); Prevention of Minors' Access to Tobacco Act, title 39, chapter 57, Idaho Code; Consumer Protection Rules, IDAPA 04.02.01000 et seq.; Telephone Solicitation and Pay-Per-Telephone Call Services Rules, IDAPA 04.02.02000 et seq.; and Tobacco Master Settlement Agreement Complementary Act Rules, IDAPA 04.20.01000 et seq.

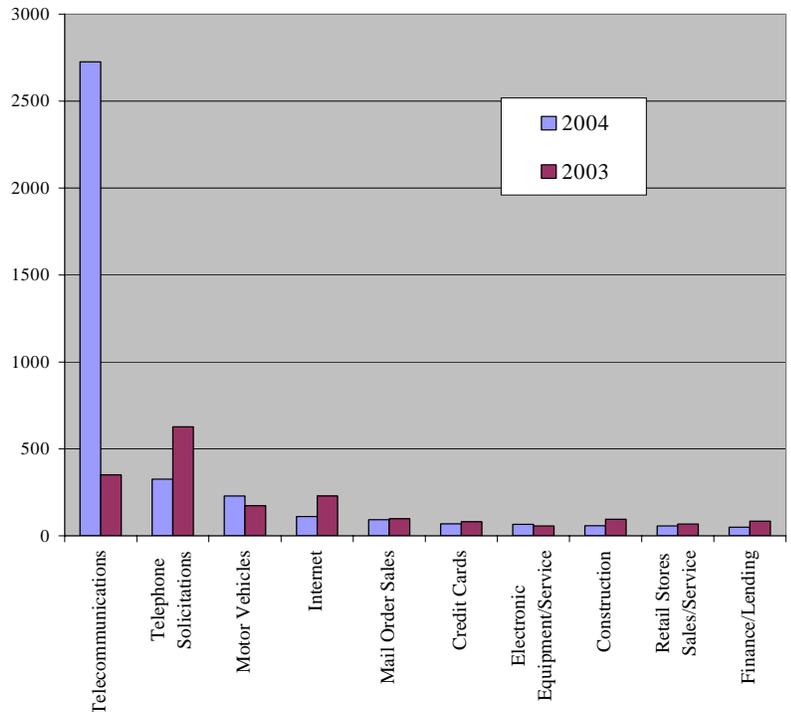
## 2004 TOP TEN CONSUMER COMPLAINTS

Telephone solicitation complaints, which include deceptive telemarketing offers and violations of Idaho's No Call Law, plummeted by more than 48%. This decline continues a pattern that started in 2002, and is attributable to the Attorney General's enforcement of Idaho's No Call and Telephone Solicitation laws and to improved compliance by telemarketers. Telecommunications complaints, however, jumped greatly. The increase of telecommunications complaints, which cover various telecommunication business practices, is largely the result of Idahoans filing complaints about unsolicited fax ads. There were 2,726 telecommunications complaints, putting it as the number one complaint category for 2004. Telephone solicitation complaints have held the first or second position on the Top Ten Consumer Complaint List for more than ten years. In 2004, telephone solicitation ranked second, with 326 complaints.

<b>2004 Total</b>	<b>4,079</b>
1. Telecommunications	2,726
2. Telephone Solicitations	326
3. Motor Vehicles	229
4. Internet	111
5. Mail Order Sales	92
6. Credit Cards	69
7. Electronic Equipment/Service	66
8. Construction	58
9. Retail Store Sales/Service	57
10. Finance/Lending	50
Total of all other complaints	295



<b>2003 Total</b>	<b>2,259</b>
1. Telephone Solicitations	627
2. Telecommunications	351
3. Internet	229
4. Motor Vehicles	174
5. Mail Order Sales	98
6. Construction	96
7. Collection Agencies	85
8. Credit Cards	81
9. Retail Store Sales	68
10. Electronic Equipment/Service	57
Total of all other complaints	399



## **ENFORCEMENT**

### **THE ATTORNEY GENERAL'S NO CALL LIST**

Idahoans continue to add phone numbers to the Attorney General's No Call List at a significant rate. By the end of 2004, Idahoans had registered 362,061 telephone numbers. Many Idahoans who have registered on the No Call List continue to report that unwanted telephone solicitations have gone down significantly or have been completely eliminated.

Compliance with Idaho's No Call Law continued to improve in 2004. In 2001, consumers filed 1,481 No Call complaints. In 2002, the number dropped to 968. In 2003, the number dropped to 404. In 2004, the numbers dropped further to 362, an overall reduction from 2001 of 78%.

The Attorney General continues to monitor complaints and oversee compliance with Idaho's No Call Law.

### **CONSUMER PROTECTION CASES**

The Attorney General undertook a variety of consumer protection matters. Several were precedent setting in scope and impact. The cases include:

**UNSOLICITED FACSIMILE ENFORCEMENT.** The Attorney General obtained a settlement that permanently prohibits Fax.com, the nation's largest "fax blaster," from sending unsolicited facsimile advertisements to Idaho telephone numbers. In a lawsuit against the company, the Attorney General alleged that Fax.com used auto-dialers to locate active fax numbers, which Fax.com compiled into a computer database. Fax.com then sent unsolicited advertisements to the active fax machines. Other businesses paid Fax.com to perform this "service." Fax.com paid the Attorney General \$7,997 in fees and penalties. The company also agreed to pay \$5,000 in liquidated damages for each unsolicited fax it sends into Idaho in the future.

**NEURONTIN.** The Attorney General entered into an Assurance of Voluntary Compliance with Warner Lambert Company (a wholly-owned subsidiary of Pfizer, Inc., the world's largest pharmaceutical company), resolving allegations of deceptive "off-label" marketing of the drug Neurontin. Neurontin is a prescription drug approved by the Food and Drug Administration (FDA) for use with other drugs in the treatment of some types of seizures and for the management of nerve pain caused by the herpes virus or shingles. Approximately 90% of Neurontin prescriptions, however, are for "off-label purposes." "Off-label" refers to the use of an FDA approved medication for any purposes other than those specifically listed on the drug's labeling for that medicine. Doctors frequently prescribe medications "off-label" because there is evidence that the drug may effectively treat a condition even though FDA has not specifically approved the drug to treat that condition.

The investigation focused on alleged violations of state consumer protection laws that occurred when Warner-Lambert promoted Neurontin for "off-label" purposes, including certain

psychiatric disorders, back pain, and headache, even though the scientific evidence supporting the use of Neurontin for these conditions was lacking.

Warner Lambert paid the states \$28 million dollars for a remediation program to provide physicians, as well as consumers, with fair and balanced information about Neurontin. Warner Lambert also paid the states \$10 million dollars for attorney fees and other costs of investigation. Idaho's share of the payment for attorney fees and costs was \$278,000.

**FORD MOTOR CREDIT.** The Attorney General, with other states, entered into a multistate settlement with Ford Motor Credit regarding its leasing practices, impacting more than 150,000 Ford customers nationwide. The settlement involved Ford Motor Credit's "Red Carpet" leasing program, which came under scrutiny when investigators found that early termination of vehicle leases resulted in charges that were sometimes higher than the actual balance owed in the lease. Dealers would notify customers of the balance due, which included an additional charge not owed to Ford Motor Credit under the terms of the lease. The dealer would discharge the lease obligation to Ford Motor Credit but keep the extra amount charged to consumers, who were unaware of the correct payoff figure.

The settlement is the result of the cooperation of Ford Motor Credit and 1,300 participating Ford and Lincoln Mercury dealers, who paid more than \$6.2 million in legal fees and costs. Seven dealers in Idaho committed to the reforms set forth in the settlement. Eligible Idaho consumers, who will be notified by Ford Motor Credit, may qualify for a \$100.00 restitution payment from the company. In the agreement, Ford Motor Credit agreed to change its Red Carpet lease contract language to clearly explain a consumer's rights when terminating a vehicle lease early. The change involves not only Ford Motor Credit branches, but also the practices at Ford and Lincoln Mercury stores. Ford Motor Credit also agreed to pay for the administration of the settlement and the costs of sending notice of the settlement to consumers.

**WIRELESS TELEPHONE SETTLEMENT.** The Attorney General, with other states, concluded a three-year investigation of Cingular Wireless, L.L.C., Sprint Spectrum, L.P., and Verizon Wireless. The investigation focused on whether the carriers' advertising, such as television, radio, Internet, and print ads, violated consumer protection law. The three wireless telephone carriers entered into an Assurance of Voluntary Compliance, which requires them to change their advertising and billing practices. They also collectively paid the Office of the Attorney General \$100,000 for costs and fees.

**RIVERSIDE FUNERAL SERVICES.** Working in conjunction with the Idaho Bureau of Occupational Licensing, the Attorney General filed a civil action against the Mitchell and Kimberly McBride. The McBrides, doing business as Riverside Funeral Services, sold pre-paid funeral plans to more than 100 Treasure Valley consumers. The complaint alleges that the McBrides failed to place more than \$200,000 in trust accounts. This failure left the victims, mostly elderly people, without funeral arrangements. The lawsuit is pending.

### **TOBACCO ENFORCEMENT**

The Legislature has assigned the Attorney General important enforcement duties under Idaho's Tobacco Master Settlement Agreement Act, Tobacco Master Settlement Agreement

Complementary Act, and Prevention of Minors' Access to Tobacco Act. The Attorney General prosecutes and defends these laws against constitutional challenge in state and federal court actions. The Attorney General also enforces and defends the state's Master Settlement Agreement (MSA).

**MASTER SETTLEMENT AGREEMENT (MSA) MATTERS.** During 2004, the tobacco industry paid \$22,834,498 to Idaho, pursuant to its settlement agreement with Idaho. The Attorney General continues to work on many issues related to the settlement agreement, including enforcement of Idaho's Tobacco Master Settlement Agreement Act and Tobacco Master Settlement Agreement Complementary Act. In 2004, the Attorney General filed a lawsuit against Parker Tobacco Company for failure to deposit moneys into escrow as required by Idaho's Tobacco Master Settlement Agreement Act. The case is pending.

As mentioned, the Attorney General also continues to defend the MSA and Idaho's tobacco laws in state and federal lawsuits. The lawsuits assert that the MSA, as well as Idaho's Tobacco Master Settlement Agreement Act and Tobacco Master Settlement Agreement Complementary Act, violate state and federal constitutional provisions or are preempted by federal law. To date, the Attorney General has successfully defeated these challenges to Idaho law in actions arising in Idaho, California, Washington, D.C., Oregon, Kentucky, and New York. Several matters are still pending.

Pursuant to Idaho's Tobacco Master Settlement Agreement Complementary Act, the Attorney General maintains and administers a Directory of Compliant Tobacco Product Manufacturers and Brands. The Attorney General certified 64 tobacco product manufacturers and 408 tobacco brands. The Directory can be reviewed at:

[http://www2.state.id.us/ag/consumer/tobacco/directory\\_index.htm](http://www2.state.id.us/ag/consumer/tobacco/directory_index.htm).

The Attorney General also promulgated Idaho's Tobacco Master Settlement Agreement Complementary Rule. The Rule was approved by the Legislature in 2004.

**PREVENTION OF MINORS' ACCESS TO TOBACCO.** The Attorney General entered into an agreement with Rite Aid Corporation to implement new policies and procedures to reduce tobacco sales to minors in the company's stores in Idaho and throughout the country. Among other provisions, Rite Aid agreed to:

- Train employees on state and local laws and company policies regarding tobacco sales to minors, including explaining the health-related reasons for laws that restrict youth access to tobacco.
- Check the ID of any person purchasing tobacco products when the person appears to be under age 27, and only accept currently valid government-issued photo identification as proof of age.
- Use cash registers programmed to prompt ID checks on all tobacco sales.

The Rite Aid settlement is the result of an ongoing, multi-state enforcement effort. The Attorney General previously joined similar agreements that apply to all Wal-Mart Stores,

Walgreens stores and to all gas stations and convenience stores operating under the Exxon, Mobil, and BP brand names in Idaho and the other settling states. The goal of these settlements is to secure agreement to adopt policies and practices to prevent youth access to cigarettes and other tobacco products. Preliminary research indicates that the agreements are having a positive effect in preventing youth access to cigarettes and other tobacco products.

Under Idaho's Prevention of Minors' Access to Tobacco Act, the Attorney General is investigating the Internet sale of tobacco products.

### **COMPETITION ACT CASES**

In enacting Idaho's Competition Act, the Legislature stated that the Act's purposes are to maintain and promote economic competition in Idaho commerce, to provide the benefits of that competition to consumers and businesses in the State, and to establish efficient and economical procedures to accomplish these purposes and policies. The Attorney General took action in 2004 under the Competition Act to realize these purposes.

**VITAMIN PRICE-FIXING CASE.** Idaho consumers received more than \$1.2 million and Idaho businesses received more than \$4.6 million from a Competition Act case involving vitamins. The Attorney General obtained final district court approval of the settlement. He also obtained dismissal of an appeal of the settlement.

The settlements are the largest ever under state laws that permit consumers and businesses to recover damages for price-fixing overcharges, even though the consumers and businesses did not buy directly from the price-fixers. Federal antitrust law does not permit these "indirect purchasers" to recover damages, but Idaho's Competition Act permits such recoveries.

The settlement, with vitamin manufacturers Hoffman-La Roche, BASF Corporation, Aventis Animal Nutrition S.A., Takeda Chemical Industries Ltd., Eisai Co. Ltd., and Daiichi Pharmaceutical Co. Ltd., was reached in conjunction with similar settlements entered into by the defendants and 20 other states, Puerto Rico, and the District of Columbia. In Idaho, the Attorney General alleged that the six companies conspired for more than a decade to fix prices and restrict supplies of vitamins.

Under the settlement, the companies paid more than \$177 million to compensate consumers and businesses in the 23 participating jurisdictions. Consumers received more than \$107 million in 2003. Idaho businesses received their restitution checks in 2004.

**BRAND NAME DRUG CASES.** The Attorney General settled four lawsuits with drug manufacturers in 2003 and 2004. The cases involve anti-competitive acts used to keep generic versions of the manufacturers' brand drugs off the market.

Two of the settlements are with Bristol-Myers Squibb Company and involved the company's anti-anxiety drug BuSpar and its anti-cancer drug Taxol. In 2004, Idahoans received more than \$246,000 in restitution from the BuSpar and Taxol settlements. The Attorney General also recovered \$287,000 in damages suffered by the state.

A third settlement, with Aventis Pharmaceuticals, Inc. and Andrx Corporation, involved Cardizem CD, a drug widely used for treatment of chronic chest pains, high blood pressure, and prevention of heart attacks. The Cardizem settlement has received court approval, however an appeal to the United States Supreme Court is expected.

The fourth settlement is with Organon USA and Akzo Nobel N.V. and involves the drug Remeron, an anti-depressant drug. The district court has granted preliminary approval. Notice of the settlement to injured persons is pending.

The Cardizem and Remeron settlements will result in thousands of dollars being returned to the State of Idaho. Additionally, the settlements will provide millions of dollars for consumer restitution. The Attorney General will announce the consumer claims process when the settlements become final.

**MUSIC CDs.** The Attorney General and 40 other state attorneys general negotiated a \$143 million price-fixing settlement with five of the largest U.S. distributors of prerecorded music compact discs (CDs) and three large retailers. Under the settlement, 15,427 Idaho residents filed claims and received refund checks totaling \$212,275. In addition, the Attorney General's Office received 25,102 compact discs with an estimated value of \$342,000. The Attorney General distributed the CDs to 96 public libraries in 91 Idaho communities under a distribution plan approved by a federal district court.

The attorneys general filed an antitrust lawsuit in federal court in August 2000, alleging that the five music distributors (including their affiliated labels) and three large music retailers entered into illegal conspiracies to raise the price of prerecorded music to consumers. The plaintiffs also alleged that price competition among music CD retailers was reduced as a direct result of the conspiracy. The defendants in the settlement are music distributors Bertelsmann Music Group, Inc.; EMI Music Distribution; Warner-Elektra-Atlantic Corporation; Sony Music Entertainment, Inc.; Universal Music Group; and national retail chains Transworld Entertainment Corporation, Tower Records, and Musicland Stores Corporation.

## **EDUCATION**

Consumer Protection staff made consumer education presentations throughout the State of Idaho. Attorney General staff spoke to hundreds of people in a number of different speaking engagements.

The Attorney General highlighted the growing problem of identity theft at four major fairs in Idaho. The staff talked about identity theft and other consumer issues with thousands of Idaho residents during the Western Idaho, Northern Idaho, Twin Falls, and Eastern Idaho Fairs. Approximately 1,500 Idaho fair attendees received a copy of the Attorney General's publication "Identity Theft."

The Attorney General's Office completed its project of translating consumer protection information brochures into Spanish. The Office obtained two separate grants to pay for the translation. A fund created as a result of a 1997 multi-state settlement with the Sears Corporation provided the grants. The Attorney General's goal is to provide a consumer information library to Spanish-speaking citizens comparable to that available in English. All of the translated materials

are available free of charge and are also available on the Attorney General's homepage at: <http://www.idaho.gov/ag>. Since June 2001, the Attorney General's Consumer Protection Unit has utilized the telephone services of the Language Line Service to enable Spanish-speaking consumers to obtain consumer information and referral by telephone.

All of the Attorney General's written consumer education materials are available through the Attorney General's Internet homepage. The homepage includes tip sheets covering telephone solicitors, automobile repairs, mail fraud, Idaho's Lemon Law, construction fraud, charitable donations, and other subjects. Consumers can also read Idaho's consumer protection laws and learn how to file a consumer complaint. The Attorney General's Internet address is: <http://www.idaho.gov/ag>. Citizens can also obtain information on consumer issues by calling 334-2424 (Boise) or toll-free (in-state) 800-432-3545.

The Attorney General's educational efforts do not use tax dollars. Money from civil penalties, fees, and reimbursed costs is deposited into the consumer protection account. Funds from this account pay for the Attorney General's educational activities, pursuant to legislative appropriation.



## CONSUMER PROTECTION -- BY THE NUMBERS

ACTIVITY	1989	1990	1991	1992	1993	1994	1995	1996	1997	1998
Complaints*	1,243	1,614	2,525	3,367	3,130	3,228	3,627	4,497	5,451	5,678
Dollars Claimed Lost	\$735,731	\$680,172	\$489,467	\$831,437	\$1,042,885	\$1,268,283	\$960,191	\$528,945	\$920,285	\$882,486
Consumer Restitution Recovered	\$22,201	\$130,469	\$263,435	\$394,376	\$986,571	\$1,757,469	\$532,657	\$1,363,375	\$1,918,676	\$638,360
Civil Penalties & Costs Recovered	\$0	\$500	\$56,500	\$127,845	\$243,571	\$163,621	\$134,000	\$164,300	\$537,768	\$413,121
Enforcement Actions**	6	9	62	66	100	78	96	63	50	56
Telemarketers Registered	N/A	N/A	N/A	18	41	66	57	61	46	51

ACTIVITY	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008
Complaints*	1,874	2,193	3,664	3,076	2,259	4,079				
Other Consumer Contacts*	8,005	8,125	21,925	11,998	7,635	2,762				
Dollars Claimed Lost	\$793,493	\$765,555	\$1,190,849	\$860,542	\$967,673	Not available				
Consumer Restitution Recovered	\$376,972	\$905,055	\$1,429,325	\$1,147,339	\$1,671,078	\$5,777,643				
Civil Penalties & Costs Recovered	\$962,019	\$546,136	\$209,560	\$1,569,232	\$566,486	\$528,138				
Enforcement Actions**	29	23	32	45	30	15				
Telemarketers Registered	48	46	30	69	76	76				
Idaho Numbers on No Call List	N/A	N/A	33,731	45,968	256,182	362,061				

\* From 1989 to 1998, this category included all written complaints lodged, inquiries made, information provided and consumers' requests for written information. Implementation of a new database enables the Unit to now track complaints and other consumer contacts separately.

\*\* Includes Assurances of Voluntary Compliance, Judgments, and Orders Compelling Response and Granting Injunctive Relief obtained. Lawsuits filed, but not yet concluded, are not counted.