

**LAWRENCE G. WASDEN**  
**ATTORNEY GENERAL**  
**STATE OF IDAHO**



**2015 FISCAL YEAR REPORT**

**CONSUMER PROTECTION, COMPETITION,  
CHARITIES, TELEPHONE SOLICITATIONS, AND  
TOBACCO ENFORCEMENT**



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## STATE OF IDAHO

OFFICE OF THE ATTORNEY GENERAL

LAWRENCE G. WASDEN

Dear Idahoans:

On January 9, 2015, I had the privilege of becoming Idaho's longest serving Attorney General. Each fiscal year, I issue a report to the public summarizing the activities of my Consumer Protection Division and discussing a variety of consumer-related issues facing our state. This is my 14<sup>th</sup> annual report to you as your Attorney General.

Idaho's consumer laws protect consumers, businesses and the marketplace from unfair or deceptive acts and practices, as well as unreasonable restraints of trade. My office seeks to fulfill this charge efficiently and economically through consumer education, mediation of consumer complaints, and, where appropriate, enforcement actions.

This year presented a number of successes. We reached a \$21.5 million settlement with the securities rating company Standard & Poor's, resolving our lawsuit alleging it misrepresented the objectivity of its ratings. And, the Ninth Circuit Court of Appeals affirmed the trial court's decision finding St. Luke's violated the state competition and federal antitrust laws when it acquired Saltzer Medical Group.

We also experienced challenges during FY 2015. Several Idaho businesses took money from consumers for goods or services and subsequently closed their doors without offering refunds to, or notifying, their customers. Consumers also continued to report receiving telephone calls from criminals posing as representatives of the Internal Revenue Service.

The Consumer Protection Division received 869 complaints and handled over 11,700 other consumer-related contacts in FY 2015. The Division completed 26 enforcement actions, which resulted in over \$1 million in consumer restitution.

This report highlights these, and other, significant consumer-related issues and activities in FY 2015. I welcome comments and questions from the public and media about the information presented in this report, and, as Idaho's Attorney General, I look forward to continuing my commitment to protecting the integrity of Idaho's marketplace.

Sincerely,

A handwritten signature in blue ink, appearing to read 'L. Wasden', is written over a horizontal line.

LAWRENCE G. WASDEN  
Attorney General

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# Annual Highlights

## Consumer Complaints and Contacts

- Top Consumer Complaint Category: **Motor Vehicles (same as 2014)**
- Total Consumer Complaints Filed: **869 (up from 829 in 2014)**
- Total Mediated Complaints: **648 (down from 664 in 2014)**
- Total Consumer Contacts Logged: **11,754 (up from 9,678 in 2014)**

## Enforcement Actions

- Completed **26 consumer-related** enforcement actions.
- The Ninth Circuit Court of Appeals **affirmed** the federal district court's decision finding **St. Luke's** acquisition of Saltzer Medical Center **violated state competition** and federal antitrust laws.
- Obtained a **\$21.5 million settlement**—Idaho's third largest consumer-related settlement—from **Standard & Poor's** for allegedly misrepresenting that its securities ratings were independent and objective.
- Continued **defense of Idaho's tobacco Master Settlement Agreement (MSA)** payments.

## Restitution, Civil Penalties, and Other Payments

- Recovered **\$1,069,531 in consumer restitution**—\$1.44 for each taxpayer dollar appropriated for consumer operations in FY 2015 (\$738,999). This is the **23<sup>rd</sup> consecutive year** the Consumer Protection Division has recovered more for residents and businesses than the Legislature appropriated to the Division.
- Recovered and deposited into the consumer protection account **\$24,171,593 in civil penalties, fees, and costs**.
- **Transferred \$21,685,936** in unspent consumer protection account funds to the general fund. **Since 2000** the Consumer Protection Division has **transferred \$46,131,472** in unspent consumer protection account funds to the general fund.
- **Received \$24,186,768 in payments** pursuant to the MSA. Since the MSA was finalized in 1998, tobacco companies have paid \$406,469,889 to Idaho.

# State Consumer Statutes Enforced

<b>Consumer Protection Statutes (Idaho Code)</b>	
<i>Idaho's unfair or deceptive acts or practices law, as well as protections and disclosures covering specific seller-purchaser transactions or consumer issues.</i>	
Idaho Consumer Protection Act	Title 48, chapter 6
Idaho Lemon Law	Title 48, chapter 9
Bad Faith Assertions of Patent Infringement	Title 48, chapter 17
Idaho Motor Vehicle Service Contract Act	Title 49, chapter 28
General Contractor Disclosure Law	§ 45-525
Consumer Foreclosure Protection Act	Title 45, chapter 16
Home Loan Modification Review Notice Law	§ 45-1506C
Credit Report Protection Act	Title 28, chapter 52
Loan Broker Law	Title 26, chapter 25
Security Breaches	Title 28, chapter 51
Pyramid Promotional Schemes	§ 18-3101
Service Repair Contracts & Legal Expense Plans	§§ 41-114A & 41-114B
<b>Competition (Idaho Code)</b>	
<i>Idaho's antitrust law.</i>	
Idaho Competition Act	Title 48, chapter 1
<b>Charitable Solicitations and Charitable Assets (Idaho Code)</b>	
<i>Idaho's deceptive charitable contributions law and statutes designed to protect assets subject to charitable trusts.</i>	
Idaho Charitable Solicitation Act	Title 48, chapter 12
Idaho Nonprofit Hospital Sale or Conversion Act	Title 48, chapter 15
Prudent Management of Institutional Funds Act	Title 33, chapter 50
Supervision of Charitable Trust Assets	§ 67-1401(5)
Modification of Charitable Trusts	Title 68, chapter 12
<b>Telephone Solicitations (Idaho Code)</b>	
<i>Idaho's deceptive telephone solicitation and telephone solicitor registration statute, as well as its law governing 1-900 calls.</i>	
Idaho Telephone Solicitation Act	Title 48, chapter 10
Idaho Pay-Per-Telephone Call Act	Title 48, chapter 11
<b>Tobacco (Idaho Code)</b>	
<i>Idaho's Master Settlement Agreement and laws regulating the importation, distribution, sale, and use of tobacco and tobacco-related products.</i>	
Prevention of Minors' Access to Tobacco Act	Title 39, chapter 57
Idaho Tobacco Master Settlement Agreement Act	Title 39, chapter 79
Idaho Tobacco Master Settlement Agreement Complementary Act	Title 39, chapter 84
Reduced Cigarette Ignition Propensity Act	Title 39, chapter 89

# Enforcement Actions

For additional information about the matters discussed in the following sections, click on the links provided or on the ⓘ at the end of each description.

## CONSUMER PROTECTION ACTIONS

Enforcement of Idaho's consumer laws protects a free and competitive marketplace and ensures a level playing field for all businesses. A marketplace unfettered by false, deceptive, and misleading practices and void of unreasonable restraints of trade yields the best allocation of Idaho's economic resources, the lowest prices, the highest quality, and the greatest innovative and material progress.

The Attorney General, acting on behalf of the state of Idaho and pursuant to his authority under the [Idaho Consumer Protection Act](#), initiated and concluded a number of noteworthy enforcement actions in FY 2015. This section summarizes many of the office's settlements during the year and reports the status of one ongoing case.

### ***Vision Security, LLC*** | July 2014

Consumers reported to the Attorney General that, during door-to-door sales, Vision Security, LLC, a Utah security system seller, misrepresented the terms of the company's security system contracts and failed to provide consumers with accurate information about their contract cancellation rights. Consumers often had to pay monthly fees for two security systems because Vision Security did not "buy-out" consumers' current security systems contracts as promised.

The company settled with the Attorney General in July 2014 and agreed to significantly change its business practices to comply with the Idaho Consumer Protection Act. Vision Security also paid \$1,000 to the Attorney General to reimburse him for his attorney's fees and investigative costs. ⓘ

### ***Ramon Martinez & Alianza Hispana Multiservice*** | July 2014

Operating in Nampa and Jerome, Alianza Hispana Multiservice and its owner Ramon Martinez advertised and sold legal services to consumers. The Attorney General investigated Alianza Hispana after receiving complaints that Martinez, who was not a licensed Idaho attorney, was engaging in the unauthorized practice of law.

In July 2014, the parties reached a settlement that prohibits Martinez and his company from engaging in business practices that constitute the practice of law. Failure to comply with the settlement may subject Martinez and Alianza Hispana Multiservice to a \$10,000 civil penalty.

The company also reimbursed the Attorney General for his attorney's fees and investigative costs. ⓘ

### ***Mobile Phone Cramming*** | October 2014 - May 2015

Between October 2014 and May 2015, the Attorney General, along with other state attorneys general, settled with the four largest mobile phone service providers concerning their unauthorized charges to consumers' phone bills. Using a practice known as "cramming," providers allegedly allowed third parties to charge consumers' bills for expensive and unauthorized premium text message subscription services.

The four mobile phone service providers agreed to pay millions of dollars in restitution to consumers and to stop billing consumers for unauthorized premium text message subscription services. The table below summarizes how much each provider paid in attorney's fees and costs to the state, as well as in restitution to consumers nationwide. Based on Idaho's population, consumers in Idaho should realize approximately \$1 million in restitution. ⓘ

	<a href="#">AT&amp;T Mobility</a>	<a href="#">Sprint Corp.</a>	<a href="#">T-Mobile</a>	<a href="#">Verizon</a>
<b>Restitution</b>	\$80 million	\$50 million	\$67.5 million	\$70 million
<b>Fees &amp; Costs</b>	\$230,597.70	\$138,073.04	\$207,537.93	\$184,110.99

### ***Sirius XM Radio, Inc. of New York*** | December 2014

To address consumer complaints about Sirius XM Radio's advertising and billing practices, the Attorney General and other state attorneys general entered into a \$3.8 million settlement with the company. The settlement requires Sirius to pay restitution to eligible consumers and to make significant changes to its business practices, including its cancellation process and its disclosures regarding automatic renewals. ⓘ

### ***Standard & Poor's Financial Service, LLC, et al.*** | February 2015

The Attorney General alleged in his February 2013 consumer protection lawsuit against Standard & Poor's Financial Services, LLC, and its parent corporation, McGraw Hill Companies, Inc., that Standard & Poor's misrepresented its independence and objectivity in its securities ratings before and after the 2008 financial crisis.

Following two years of litigation in state and federal court, the matter ended with Standard & Poor's paying \$21.5 million to the state of Idaho. The settlement was one of the Attorney General's largest cash settlements under the Idaho Consumer Protection Act. ⓘ

### ***Body Renew Fitness, LLC*** | February 2015

The Attorney General obtained a \$394,900 judgment against Body Renew Fitness, LLC, which operated several Treasure Valley fitness and tanning facilities. In mid-2014, Body Renew Fitness unexpectedly closed its facilities, yet continued debiting its customers' accounts.

On behalf of the state, the Attorney General filed a [lawsuit](#) against Body Renew Fitness and its owner Dakota Routh, alleging numerous violations of Idaho's consumer protection laws. Neither the company nor Routh answered the state's complaint.

The judgment includes \$13,900 in restitution for 70 consumers and prohibits Body Renew Fitness or Routh from collecting on the debts of four consumers. The remainder of the judgment includes \$375,000 in civil penalties and \$6,000 to reimburse the state for the cost of the lawsuit. Routh also is prohibited from operating an Idaho fitness facility. ⓘ

### ***Mark Wicklund & White Hat Group, Inc.*** | April 2015

In 2013, Mark Wicklund and his company, The White Hat Group, Inc., entered into a [settlement](#) with the Attorney General. The settlement stemmed from allegations that Wicklund, who claimed he was an attorney, took money from consumers and either failed to provide the purchased services or performed them incompetently. Wicklund agreed to stop misrepresenting his professional status or abilities and to pay restitution to his injured clients.

When the Attorney General learned that Wicklund had continued selling his unlicensed and unqualified legal services, the Attorney General filed a contempt motion alleging 13 separate counts against Wicklund. The court found Wicklund in contempt on seven counts and sentenced him to serve 21 days in jail for violating the settlement agreement. Wicklund also remains obligated to pay the restitution and financial penalties outlined in the settlement. ⓘ

### ***Jonathan R. Peirsol*** | May 2015

Jonathan R. Peirsol, an eastern Idaho tax preparer, allegedly made false statements on his clients' tax returns. The false tax filings, while resulting in large refunds, also triggered audits and tax penalties for his unsuspecting clients. Peirsol collected up to \$300 for each tax return he prepared.

Following a two-year investigation of Peirsol, the Attorney General and Peirsol entered into a settlement agreement. In addition to paying \$80,000 to the Attorney General to help refund consumers, Peirsol must work under the supervision of a certified public accountant if he prepares tax returns. The Idaho State Tax Commission greatly assisted the Attorney General in this matter. ⓘ



## **Credit Reporting Agencies** | May 2015

The Attorney General, along with other state attorneys general, reached a \$6 million settlement with the three largest credit reporting agencies—Equifax Information Services LLC, Experian Information Solutions Inc., and TransUnion LLC. The settlement provides better protections for consumers whose credit reports contain errors, and it requires the agencies to implement an escalated process for handling complicated credit report disputes.

The agencies may not add information about fines and tickets to credit reports, and debt collectors must provide the original creditor's name and information about the debt before the debt information is added to a credit report. ⓘ

At the end of July 2015, Idaho received \$217,507 from the credit reporting agencies to reimburse the Attorney General for his attorney's fees and investigative costs. The credit reporting agencies are implementing the required changes in three phases over the next three years. ⓘ

## **Classmates, Inc., Florists' Transworld Delivery, Inc., & FTD.com Inc.** | May 2015

The Attorney General joined other state attorneys general in an \$11 million settlement with Classmates, Inc., Florists' Transworld Delivery, Inc., and FTD.com Inc. to resolve allegations related to their advertising and billing practices. A lengthy investigation of the companies revealed they used third-party marketers that allegedly engaged in deceptive negative option sales. This practice commits a consumer to a reoccurring purchase of a good or service, such as a travel club membership, until the consumer affirmatively cancels the purchase or subscription.

The third-party marketers approached Classmates and FTD's customers with "free" or "risk free" trials that converted to paid subscriptions if consumers failed to cancel. Classmates and FTD shared their customers' personal information and credit card account numbers with the third-party marketers so consumers could be billed for unwanted offers. The settlement prohibits this practice.

Classmates must clearly disclose to consumers that their subscriptions will automatically renew, and it must make it easier for consumers to cancel their subscriptions. The company established a \$3 million restitution fund to pay refunds to consumers who were enrolled into Classmates' subscription service without authorization or who experienced difficulty when trying to cancel their subscriptions.

In mid-July, the Attorney General received over \$72,000 from FTD and over \$132,000 from Classmates to reimburse him for his attorney's fees and investigative costs. ⓘ



***Living Essentials, LLC, & Innovation Ventures, LLC*** | May 2015 - Present

The Attorney General filed a consumer protection lawsuit against Living Essentials, LLC, and Innovation Ventures, LLC, (“the defendants”), which advertise and sell 5-hour ENERGY® products throughout Idaho. The lawsuit, filed in Ada County District Court, alleges multiple violations of the Idaho Consumer Protection Act and the Idaho Rules of Consumer Protection. 5-hour ENERGY® is marketed as a dietary supplement and competes in the energy drink market. Each “shot” of Original 5-hour ENERGY® contains 200 mg. of caffeine, and the “Extra Strength” version contains 250 mg. of caffeine. Decaffeinated 5-hour ENERGY® has 6 mg. of caffeine. All three versions contain vitamins and an “Energy Blend” of amino acids.

In their advertisements of 5-hour ENERGY® products between 2004 and 2013, the defendants claimed that the vitamins and amino acids in 5-hour ENERGY® were superior to coffee in providing consumers with energy, alertness, and focus. The Attorney General contends in his lawsuit that the defendants’ advertising campaigns were misleading, false, and deceptive.

In June 2015, the defendants filed a motion to dismiss the Attorney General’s complaint. A hearing on the defendants’ motion is scheduled in September 2015.

***Kevin E. Mitchell*** | June 2015

Kevin E. Mitchell, who owned CoiNuts, Inc., in Coeur d’Alene, accepted hundreds of thousands of dollars from consumers who came to his store to buy gold and silver coins. Over time, it became apparent to consumers that Mitchell, who ignored consumers’ refund requests, had misrepresented his ability to acquire the purchased coins.

The Attorney General filed a lawsuit against CoiNuts and Mitchell in April 2013, and a default judgment of \$742,826 was entered against CoiNuts in September 2013. A year later, the court ruled that Mitchell personally violated the Idaho Consumer Protection Act. The court permanently barred Mitchell from owning or operating a coin business in Idaho. Mitchell must pay \$579,569 in restitution to 10 consumers who never received the coins they purchased. ⓘ

***Liberty Publishers Service, Inc., et al.*** | June 2015

Following entry of a settlement agreement with the Attorney General, Liberty Publishers Service, Inc., a magazine subscription corporation that operates under more than a dozen names, agreed to stop soliciting in Idaho. The company also paid the Attorney General \$500 to cover his attorney’s fees and investigative costs.

Liberty Publishers Service is a New York corporation based in Oregon. The business allegedly misrepresented its low-priced magazine subscription renewals. Consumers received renewal notices from Liberty Publishers Service and, based on the allegedly deceptive content of the notices, believed the notices came from actual magazine publishers. Consumers sometimes

paid the excessive subscription prices, not realizing Liberty Publishers Service was unaffiliated with any magazine publishing company.

### ***Activities Related to Security Breaches*** | Ongoing

In 2014, the [Privacy Rights Clearinghouse](#), a consumer advocacy organization, reported hundreds of security breaches at for-profit and nonprofit businesses, healthcare providers, educational institutions, and governmental agencies nationwide. The [Identity Theft Resource Center](#) reported in a January 2015 statement that it identified more than 780 security breaches in 2014. These breaches, caused primarily by criminal hacks and security shortfalls, exposed millions of personal, medical, financial, employment, and other records.

[Idaho law](#) defines a security breach as “the illegal acquisition of unencrypted computerized data that materially compromises the security, confidentiality, or integrity of personal information for one or more persons maintained by an agency, individual or commercial entity.” Personal information, which excludes publicly available information, means an Idaho consumer’s name and the consumer’s unencrypted Social Security number, driver’s license number, or financial account and PIN/password.

Only state and municipal agencies must report security breaches to the Attorney General. Idaho does not require commercial entities to report security breaches to the Attorney General. Consequently, the Attorney General only becomes aware of a commercial security breach if a business voluntarily notifies the Attorney General or if information about the breach is released to the media.

The Attorney General is concerned about the pervasive exposure of consumers’ personal and financial information. To help educate consumers about security breaches, in FY 2015, the Attorney General issued [consumer alerts](#) through the media and his Twitter account—[@lawrencewasden](#). Additionally, the Attorney General joined multistate investigations involving a number of security breaches that allegedly compromised Idahoans’ personal information.

## **COMPETITION ACT MATTERS**

A marketplace free of unreasonable restraints of trade yields the best allocation of economic resources, the lowest prices, the highest quality, and the greatest material and innovative progress. The Idaho Competition Act, title 48, chapter 1, Idaho Code, promotes economic competition in Idaho’s marketplace.

The Attorney General successfully completed a number of state competition and federal antitrust matters in FY 2015. Significantly, the Ninth Circuit upheld the trial court’s decision that St. Luke’s acquisition of Saltzer Medical Center violated the Idaho Competition Act. Other

important actions included antitrust litigation with American Express Company and settlements with four Rexburg physicians who allegedly conspired to withhold their services at the local hospital until their pay was increased.

### ***American Express Company, MasterCard, & Visa Litigation*** | Pending

Along with the United States Department of Justice and other state attorneys general, the Attorney General filed a [civil antitrust lawsuit](#) in New York federal court against Visa, MasterCard, and American Express. The lawsuit alleged the companies, which operate the three largest credit card networks in the country, require merchants to restrict the types of discounts provided to credit card customers. Restrictive payment rules inhibit price competition among credit card networks. When merchants face increased business costs, consumers pay higher prices.

The attorneys general and USDOJ [settled](#) with Visa and MasterCard in 2011. American Express, however, chose to proceed with a court trial, which began on July 7, 2014, in Brooklyn, New York. The trial lasted almost seven weeks.

In February 2015, the court [ruled](#) that American Express's rules unfairly prevented millions of American Express merchants from offering their customers the same cost-saving incentives that other credit card companies offered.

The court entered a [final judgment](#) in late April 2015, requiring American Express to change its anticompetitive business practices. American Express's appeal to the U.S. Second Circuit Court of Appeals is pending. [i](#)

### ***Dynamic Random Access Memory Manufacturer Litigation*** | Pending

The Dynamic Random Access Memory Manufacturer (DRAM) multistate litigation involved 13 manufacturers of computer memory chips and represents millions of dollars in damages to Idaho's consumers, including businesses and government agencies. The multistate litigation, which the [Attorney General joined in 2006](#), stems from allegations that the manufacturers violated the Idaho Competition Act and federal antitrust law by coordinating the sales prices of their memory chips. As a result of the manufacturers' alleged price fixing, Idahoans paid higher prices for computers and other electronics.

The Attorney General, along with other participating state attorneys general, entered into [settlement agreements](#) with the manufacturers. On June 27, 2014, the court [approved](#) the settlement agreements. The settlements collectively total \$310 million and include consumer restitution for Idahoans.

To assist the attorneys general in implementing a restitution distribution process, they employed a settlement administrator. Consumers who purchased electronics containing DRAM

products between 1998 and 2002 had until August 1, 2014, to file a restitution claim with the settlement administration. ⓘ

Presently, the settlement administrator is reviewing and validating consumers' restitution claims. Consumers who filed eligible claims will receive restitution payments of at least \$10 with larger purchasers receiving \$1,000 or more. Information about the settlements, including the status of payments, is available on the settlement administrator's website at: <http://dramclaims.com>.

### ***Madison Memorial Hospital ER Physicians Boycott*** | December 2014 & March 2015

In September 2013, a group of physicians began negotiating changes to Madison Memorial Hospital's emergency on-call policy. Subsequently, the physicians told hospital administrators that, unless the hospital paid the physicians for their on-call time, they would stop providing on-call emergency services to the hospital. The Attorney General initiated an investigation under the Idaho Competition Act because the law prohibits conspiracies between two or more persons in the unreasonable restraint of trade or commerce.

The physicians involved in the alleged conspiracy entered into [settlement agreements](#) with the Attorney General to resolve allegations the physicians violated the Idaho Competition Act. For the next five years, the physicians must report annually to the Attorney General their efforts to comply with the Idaho Competition Act. ⓘ

### ***E-Books Price Fixing Litigation (Apple, Inc.)*** | June 2015

The Attorney General joined with other state attorneys general in an antitrust lawsuit against Apple, Inc., and five of the largest U.S. book publishers. The lawsuit alleges a conspiracy between Apple and the publishers to raise e-book retail prices by controlling retail price negotiations with distribution outlets and by delaying the availability of front-list e-books. Apple and the publishers also allegedly agreed to forgo the wholesale-retail model and instead allow the publishers to set e-book prices and to sell them directly to consumers.

The publishers settled with the attorneys general in mid-2013, leaving Apple to defend itself on the question of liability at a three-week court trial in June 2013. The court ruled that Apple's price fixing scheme violated state and federal antitrust laws. The final judgment addresses Apple's price fixing actions, and, for five years, regulates how Apple and individual publishers may interact. ⓘ

The company and two settling publishers appealed the judgment, and, on June 30, 2015, the appellate court upheld the decision. Apple agreed to pay \$400 million to consumers and \$50 million to the states if the appellate court upheld the lower court's ruling. Issues regarding restitution have not yet been resolved. ⓘ

### ***St. Luke's Health System, Ltd. & Saltzer Medical Group, P.A.*** | Pending

The Attorney General and Federal Trade Commission filed a lawsuit against St. Luke's and Saltzer Medical Group in March 2013, alleging that St. Luke's acquisition of Saltzer Medical Group violated federal and state antitrust and competition law. Specifically, the Attorney General and Federal Trade Commission argued the acquisition substantially lessened competition for the healthcare industry in and around Nampa, Idaho.

Following a four-week federal court trial, the court ruled in favor of the Attorney General and Federal Trade Commission and ordered St. Luke's complete divestiture of Saltzer Medical Group. St. Luke's and Saltzer Medical Group appealed to the Ninth Circuit Court of Appeals, which, on February 10, 2015, upheld the lower court's decision. [i](#)

## **TELEPHONE SOLICITATIONS & REGISTRATIONS**

Recognizing the special risks and the potential for abuse of telephones for commercial solicitation, the Legislature enacted the Idaho Telephone Solicitation Act (ITSA), title 48, chapter 10, Idaho Code. The ITSA safeguards the public against deceit and financial hardship, encourages competition and fair dealings among the telemarketing industry, and prohibits telemarketers from using representations that have the tendency or capacity to mislead purchasers.

Telephone solicitors must register with the Attorney General's Consumer Protection Division before soliciting in Idaho. A sales contract between an unregistered telephone solicitor and a consumer is null and void and unenforceable.

In FY 2015, the Consumer Protection Division received and reviewed 32 telemarketer applications and registered 18 telemarketers. The Division rejected 14 applications for various reasons, but primarily because the applicant:

- was not a "telephone solicitor" as defined in Idaho Code § 48-1002(12); or
- failed to submit the required application materials.

Idaho's Do Not Call law, which established the state's "no telephone solicitation contact list," predates the National Do Not Call Registry and subjects violators to civil penalties of up to \$5,000 per violation. When the National Registry was created in 2004 all Idaho numbers registered on the Idaho-only list were transferred to the National Registry. The Federal Trade Commission reports that the National Registry presently has 1.1 million active Idaho telephone numbers.

In FY 2015, the Attorney General's Consumer Protection Division received 25 complaints and 265 informational emails from consumers about unwanted telephone calls. None of the 25

complaints warranted an enforcement action under the ITSA. Consumers primarily expressed concerns about calls received from persons engaging in criminal conduct (e.g., foreign lotteries or imposter scams) or from persons who are not “telephone solicitors” under the ITSA (e.g., appointment setters, debt collectors, or survey companies).

The Federal Trade Commission enforces federal telemarketing laws and accepts complaints regarding unwanted telephone calls and alleged violations of the National Do Not Call Registry. In its most recent Do Not Call report, the Federal Trade Commission reported it had received 14,321 complaints from Idahoans regarding unwanted calls.

## CHARITABLE SOLICITATIONS & TRUSTS

The Attorney General enforces a number of statutes related to charitable organizations and the management of their assets. The Idaho Charitable Solicitation Act (ICSA) prohibits persons from using any false or deceptive acts or practices to solicit charitable contributions. The Idaho Consumer Protection Act provides the Attorney General’s investigatory and enforcement authorities under the ICSA.

This year the Attorney General participated in a multistate settlement agreement with two organizations that purportedly solicited charitable donations to benefit cancer patients. Similar organizations are defendants in a lawsuit involving all state attorneys general and the Federal Trade Commission.

Additionally, the Attorney General has a statutory duty to ensure that charitable or public trust assets are utilized according to the charitable purpose of the organization, or, if applicable, according to the donor’s intent. The Attorney General’s responsibility often includes reviewing requests to modify the terms of a charitable trust that has become imprudent or impracticable. When necessary, the Attorney General intervenes in actions to prevent private parties from unlawfully dissipating charitable trust assets.

Each year the Attorney General receives an increasing number of trust agreements to review for possible modification. In FY 2015, the Attorney General reviewed several significant proposals to ensure protection of the donors’ charitable gifts.

### ***Idaho Aquarium, Inc.*** | February 2015

The Attorney General published a report in February 2015 summarizing his investigation of allegations that officials mismanaged the Idaho Aquarium, Inc.’s charitable assets. Missing financial records and board meeting minutes and resolutions made it difficult for the Attorney General to develop a complete history of what occurred, but the Attorney General was able to make the following findings:

- The Idaho Aquarium had inadequate record-keeping practices, which prevented the Attorney General from determining the extent of charitable fund misuse.
- The board paid excessive compensation to the Idaho Aquarium's executives and retained them in leadership positions after the executives were indicted on federal charges.
- The board neglected to oversee the executives' activities and adopted a laissez-faire approach that put the Idaho Aquarium's charitable assets and the organization at risk.

The Idaho Aquarium's board voluntarily resigned before the Attorney General completed his investigation. The Attorney General did not sue the corporation to recover the lost assets because a court action could have caused the facility's closure. Today the aquarium is under new ownership. ⓘ

### ***Cancer Charity Settlements & Litigation*** | May 2015

Children's Cancer Fund of America, Inc., and The Breast Cancer Society of America allegedly used telemarketing calls, direct mail, websites, and materials to portray themselves as legitimate charities that provided cancer patients with pain medication, transportation to chemotherapy, and hospice care. In reality, however, the organizations served as lucrative employment for family members and friends who spent consumer donations on cars, trips, luxury cruises, college tuition, gym memberships, sporting events, concerts, and dating site memberships.

Between 2008 and 2012, Idahoans donated over \$134,000 to Children's Cancer Fund of America and over \$322,000 to The Breast Cancer Society. The organizations allegedly filed false financial documents to create the illusion that they were larger and more efficient with donors' dollars than they actually were.

The Attorney General, 49 state attorneys general, the District of Columbia, and the Federal Trade Commission negotiated settlements with Children's Cancer Fund of America and The Breast Cancer Society of America. The settlements require dissolution of the organizations and liquidation of their assets. Certain individuals associated with the two entities are banned permanently from fundraising and operating charities.

In addition to joining the two settlements, the Attorney General is participating in ongoing litigation in federal district court against Cancer Fund of America, Inc., and Cancer Support Services, Inc. The claims at issue are similar to those the states and the Federal Trade Commission alleged against Children's Cancer Fund of America and The Breast Cancer Society of America. ⓘ



## TOBACCO ENFORCEMENT

The Attorney General enforces Idaho's Tobacco Master Settlement Agreement (MSA Act), Tobacco Master Settlement Agreement Complementary Act (Complementary Act), Prevention of Minors' Access to Tobacco Act, and Reduced Cigarette Ignition Propensity Acts. Enforcement of these laws includes prosecuting violators and defending the laws against constitutional challenges in state and federal court actions.

Each year the tobacco industry makes a payment to the state to help it cover costs related to treating tobacco-related illnesses. In 2015, the tobacco industry paid \$24,186,768 to Idaho, which was deposited into the Millennium Fund. Since the MSA was entered in 1998, Idaho has received payments totaling \$406,469,889.

Under Idaho's tobacco sales laws, the Attorney General maintains and administers a directory of tobacco manufacturers and brands that are in compliance with Idaho law. At present, the Attorney General has certified 33 tobacco manufacturers and 141 tobacco brands. The directory is available on the tobacco webpage of the Attorney General's website.

The Attorney General continues to litigate with the tobacco industry over the state's enforcement of certain Idaho tobacco laws. The industry disputes the effectiveness of the state's enforcement efforts and seeks to eliminate potentially tens of millions of dollars of Idaho's tobacco MSA payments. [①](#)

## CONSUMER EDUCATION AND OUTREACH

Public awareness and education remain the best defenses against consumer fraud. Providing Idaho's consumers with timely, accurate information about their rights under Idaho's consumer laws and warning consumers about pervasive scams encourages Idahoans to maintain their personal and financial vigilance. Educated consumers are better equipped to monitor and judge a business's practices, thereby promoting a more compliant and competitive marketplace.

The Attorney General provides consumer information through his website, social media, public service announcements, pamphlets and consumer tip sheets, consumer alerts, and public speaking engagements. Information and guidelines are available to companies operating in Idaho, and the Attorney General strives to continue his cooperative working relationship with Idaho's business community.

The Attorney General's educational and outreach efforts do not use tax dollars. Civil penalty payments and reimbursements for the Attorney General's fees and investigative costs are deposited into the consumer protection account. Funds from this account, pursuant to legislative appropriation, pay for the Attorney General's educational activities.

### ATTORNEY GENERAL'S WEBSITE

The Attorney General's website at [www.ag.idaho.gov](http://www.ag.idaho.gov) provides educational information and resources to help businesses and consumers better understand their rights, obligations, and remedies under Idaho's consumer-related laws. The following consumer webpages are of particular interest to Idahoans and out-of-state businesses looking to operate in Idaho:

<b>Consumer Alerts</b>	Informs the public of current scams and how to avoid them.
<b>Consumer Topics</b>	Find information about buying a car, credit and debt issues, housing, charities, identity theft, Internet safety, contractors, travel scams, and work-at-home offers.
<b>Pending Actions</b>	Updated information about the Attorney General's ongoing consumer- and competition-related litigation
<b>Settlement Information</b>	Explains how eligible consumers can apply for restitution under the terms of recent state and multistate settlements.
<b>Telephone Solicitations</b>	Provides information about Idaho's telemarketing registration process and a downloadable registration application.

## CONSUMER OUTREACH

Each year consumer specialists from the Attorney General's Consumer Protection Division visit and give educational presentations to Idaho's consumers and businesses. In FY 2015, the consumer specialists visited a number of Idaho locales to make presentations and to distribute consumer education materials.

### ***Southwest Idaho***

#### **Boise Outreach**

- High School Consumer Protection Presentations
- Veterans of Foreign Wars Mid-Winter Conference
- Consumer Protection Immigration & Scam Presentation
- Military Saves 2015
- Consumer Protection Month Library Displays
- World Relief Refugee Center Consumer Presentation
- Idaho Scam Jam Alliance Fraud Conference 2015

#### **Weiser Outreach**

- Weiser Scam Jam

#### **Caldwell / Nampa Outreach**

- Community Council of Idaho Health & Info Fair
  - Northwest Nazarene Community Fair
- Caldwell Police Dept. Senior Information Event
- Treasure Valley Community Resource Center Information Fair

### ***North Idaho***

#### **Grangeville Outreach**

Grangeville Consumer Protection Tour & Scam Jam

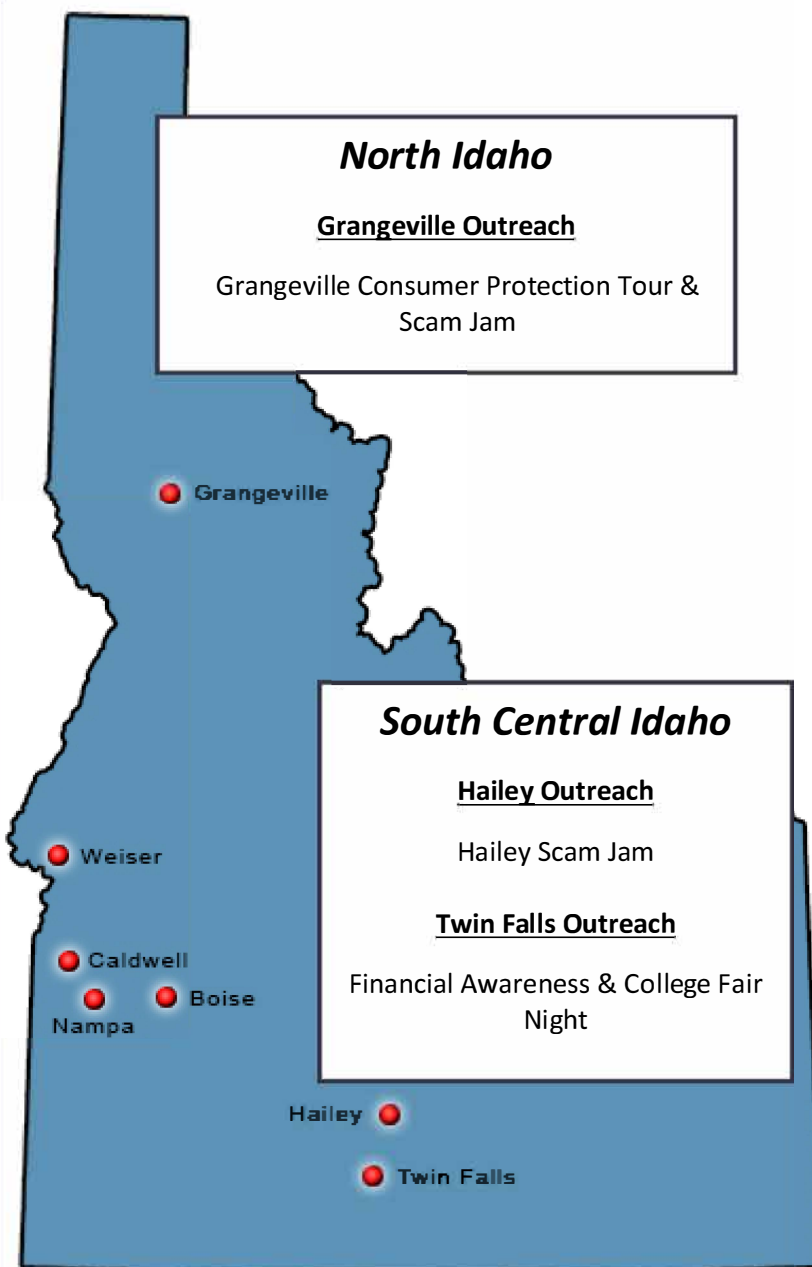
### ***South Central Idaho***

#### **Hailey Outreach**

Hailey Scam Jam

#### **Twin Falls Outreach**

Financial Awareness & College Fair Night



In FY 2015, the Attorney General was the keynote speaker at Scam Jam events in Hailey, Weiser, and Boise, and at an anti-fraud event in Boise. In June, the Idaho Auto Dealers Association invited the Attorney General to speak at its annual convention in McCall.



Also in June, the Attorney General announced the creation of The Idaho Scam Jam Alliance, a collaboration of nonprofits, advocacy groups, and government agencies



to educate consumers about consumer fraud. The Alliance organizes day-long events where consumers can learn about current scams, identity theft, guardianships and living trusts, investment and financial fraud, and other consumer fraud issues.

## NEW CONSUMER LEGISLATION

The Attorney General did not propose any consumer protection-related legislation in FY 2015. The Idaho Legislature, however, enacted a bad faith patent infringement law that became effective on July 1, 2014.

### ***Bad Faith Assertions of Patent Infringement*** | Title 48, chapter 17, Idaho Code

Recognizing the damage that abusive patent litigation causes Idaho's IT businesses, the Legislature enacted a statute to protect Idaho businesses from bad faith assertions of patent infringement. Damaged persons have a private cause of action under the act, but must bring an action within three years.

Violation of the law also constitutes an unfair or deceptive act or practice in trade or commerce under the Idaho Consumer Protection Act. Pursuant to his authority under the Idaho Consumer Protection Act, the Attorney General may seek remedies against persons suspected of violating the bad faith patent infringement statute.

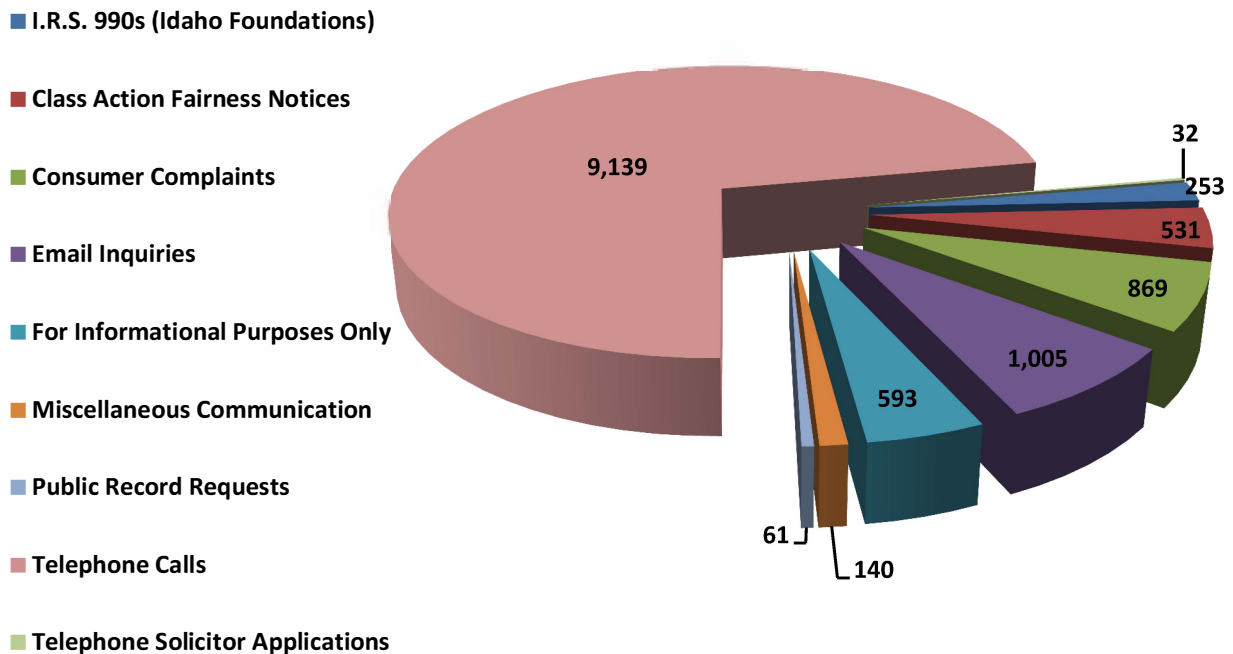
## CONTACT AND COMPLAINT DATA: WHAT DO THE NUMBERS SHOW?

This section provides a snapshot of the Consumer Protection Division's contacts and complaints during FY 2015. Each year, the Division's consumer specialists, telemarketing and housing specialist, receptionist, and deputy attorneys general have thousands of contacts with the public, the media, other government agencies, and law enforcement. The Division logs each of these contacts so it can:

- identify patterns of law violations;
- evaluate areas where additional resources are required;
- account for the Division's annual budgetary expenditures; and
- report the data to the public each year.

### CONSUMER PROTECTION DIVISION CONTACTS

The Consumer Protection Division processed more than 11,000 consumer-related contacts in FY 2015. The Division received telephone calls and emails from inquiring consumers and business owners, responded to public record requests, and processed legal filings.



## CONSUMER COMPLAINTS FILED AND MEDIATED

The Attorney General's Consumer Protection Division accepts written complaints from consumers who wish to report an alleged violation of a law the Attorney General enforces. Consumers may download a complaint form from the Attorney General's website and mail or email it to the Division.

The Division's two consumer specialists and one telemarketing and housing specialist process incoming complaints for the investigator's review. If a complaint is appropriate for the Division's informal dispute resolution program, the complaint is sent to the identified business with a request for a written response. The investigator reviews the business's response and determines what further action, if any, is appropriate. Most businesses understand the benefits of addressing their customers' concerns and voluntarily respond to complaints.

In FY 2015, the Division received 869 consumer complaints. The number one complaint category for the third year in a row was "motor vehicles," which primarily includes complaints about new and used car sales, repairs, manufacturer defects, and advertising. Allegations related to Internet advertising have increased, including claims about a lack of pricing and other disclosures, unavailability of advertised inventory, and discrepancies between advertised and actual prices. The Attorney General sent warning letters to the dealers who had complaints and encouraged them to review their advertising with the dealerships' attorneys to ensure compliance with Idaho's Motor Vehicle Advertising Rule.

Interestingly, the Division received a number of complaints describing instances where consumers—unhappy with their car purchases—simply abandoned their cars at the dealers' lots. Consumers then asked the Attorney General for assistance in obtaining refunds from the dealers. Consumers need to understand that when they buy a car, they cannot return it. If they do, they risk breaking their sales contracts and may subject themselves to legal action. The Attorney General cannot intervene on a consumer's behalf.

Complaints about "membership clubs and plans" spiked this year at 78. More than 90% of the complaints filed, however, concerned one company—Body Renew Fitness, a Treasure Valley exercise and tanning company that abruptly closed in July 2014. As noted earlier in this report, the Attorney General obtained a judgment against the company in early 2015.

The number of tenant complaints filed with the Attorney General in FY 2015 remained consistent from past years. Many of the complaints were filed against property management companies rather than individual landlords and expressed problems with:

- what constitutes "normal wear and tear;"
- a landlord's failure to make prompt repairs;



- a landlord conducting a move-out inspection without the tenant;
- increases in rent without sufficient notice; or
- a landlord's refusal to return the tenant's security deposit.

The Attorney General does not enforce Idaho's landlord tenant laws, but does mediate complaints alleging violations of the Idaho Consumer Protection Act. Additionally, the Attorney General publishes on his website the [Landlord and Tenant Guidelines](#), a reference manual that explains the parties' rights and obligations under Idaho's relevant laws.

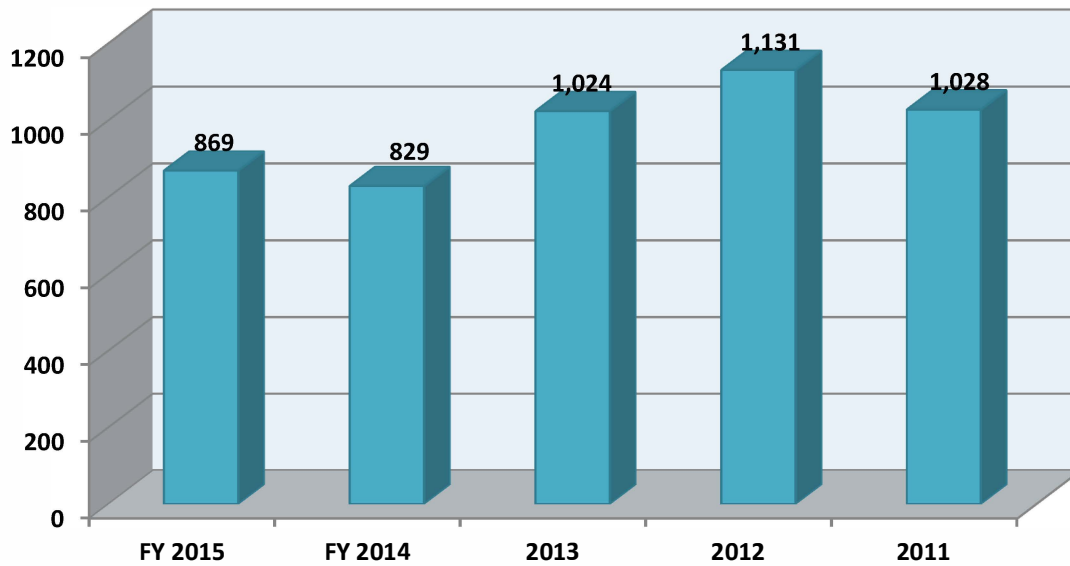
Another notable observation is the 57% decrease in consumer lending complaints between FY 2014 and FY 2015. The Attorney General continues to hear from homeowners who are having difficulties obtaining workable home loan modifications, but, the number of mortgage-related complaints has fallen substantially since they peaked at 129 in 2012.

TOP 10 COMPLAINT CATEGORIES				
RANK	COMPLAINT CATEGORY	FY 2015 TOTAL	↑ ↓	FY 2014 TOTAL
1	MOTOR VEHICLES	100	↓	109
2	MEMBERSHIP CLUBS & PLANS	78	↑	24
3	LANDLORD/TENANT ISSUES	51	↑	47
4	CELLULAR SERVICES & SALES (TIE)	37	↓	64
4	LOANS & MORTGAGE LENDERS (TIE)	37	↑	25
5	HEALTH CARE: DENTAL/OPTICAL/MEDICAL	36	↑	29
6	CABLE & SATELLITE TV ISSUES	34	↑	30
7	COLLECTION ACTIVITIES & ISSUES	32	↑	31
8	INTERNET SERVICE PROVIDERS	30	↑	24
9	CONSTRUCTION & CONTRACTORS	28	↓	32
10	INTERNET SALES & SERVICES	24	↑	18
	ALL OTHER COMPLAINT CATEGORIES*	382	↑	415
	<b>TOTAL COMPLAINTS RECEIVED</b>	<b>869</b>	<b>↑</b>	<b>829</b>

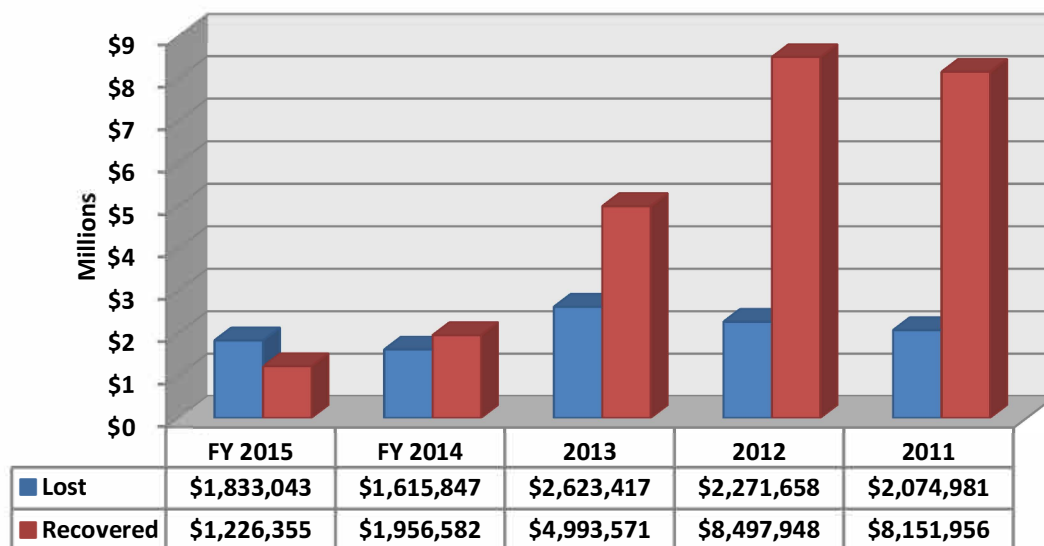
\*The Consumer Protection Division has over 100 complaint categories and subcategories for retail goods and services. The "All Other" category is a compilation of categories or subcategories that registered less than 24 complaints.

## FIVE YEAR COMPARISON

Complaints Received



Reported Dollars Lost v. Dollars Recovered



## FEDERAL TRADE COMMISSION DATA: IDAHO CONSUMERS

The Federal Trade Commission maintains a database of consumer complaints submitted directly from consumers, as well as from state and local agencies and consumer advocacy organizations. Each quarter the Consumer Protection Division submits an electronic summary of its complaints. With access to combined state, federal, and other complaint data, the Attorney General is better able to identify patterns of deception and determine where to commit his limited investigatory and enforcement resources.

At the beginning of each year, the Federal Trade Commission publishes a report about the consumer complaints it received during the prior year. The report provides data for each state and identifies the top 10 complaint categories for that year.

In 2014, the Federal Trade Commission received 2.5 million consumer complaints. Presently, the Federal Trade Commission's electronic complaint database contains more than 10 million fraud complaints for the years 2010 through 2014.

Idahoans filed 7,466 fraud complaints and 962 identity theft complaints in 2014. This number excludes the complaints submitted to the Federal Trade Commission by the Attorney General. The following illustration shows the top 10 categories for the 7,466 filed complaints.

### Fraud and Other Complaints Count from Idaho Consumers = 7,466

#### *Top 10 Fraud and Other Complaint Categories Reported by Idaho Consumers*

Rank	Top Categories	Complaints	Percentage <sup>1</sup>
1	Impostor Scams	983	13%
2	Debt Collection	907	12%
3	Banks and Lenders	448	6%
4	Telephone and Mobile Services	406	5%
5	Prizes, Sweepstakes and Lotteries	391	5%
6	Auto-Related Complaints	349	5%
7	Health Care	239	3%
8	Internet Services	232	3%
9	Shop-at-Home and Catalog Sales	218	3%
10	Television and Electronic Media	176	2%

<sup>1</sup>Percentages are based on the total number of CSN fraud and other complaints from Idaho consumers (7,466).

[\(Courtesy of the Federal Trade Commission\)](#)

# CONSUMER PROTECTION ACTIVITIES 2011 ~ 2015 SNAPSHOT

ACTIVITY	FY 2015	FY 2014	2013	2012	2011
Complaints Received	869	829	1,024	1,131	1,028
Other Consumer Contacts	11,754	9,678	10,107	10,562	10,756
Consumers Claimed Loss	\$1,833,043	\$1,615,847	\$2,623,417	\$2,271,658	\$2,074,981
Consumer Dollars Recovered	\$1,226,355	\$1,956,582	\$4,993,571	\$8,497,948	\$8,151,956
Penalties & Costs Recovered	\$24,171,593	\$404,373	\$2,361,927	\$16,468,334	\$2,530,829
Enforcement Actions	26	13	16	29	18
Registered Telemarketers	18	15	15	76	80
Numbers on DNC Registry	1,101,598*	1,119,074	1,119,074	1,088,730	1,048,897

\*Reflects the number of active Idaho registrations with the National Do Not Call Registry as of September 30, 2014.

**For more information about this report or to file a consumer complaint:**

<b>VISIT:</b>	Consumer Protection Division 954 W. Jefferson St., 2 <sup>nd</sup> Floor Boise, ID 83702
<b>WRITE:</b>	Consumer Protection Division P.O. Box 83720 Boise, ID 83720-0010
<b>CALL:</b>	(208) 334-2424 (or) (800) 432-3545 (toll free in Idaho)
<b>EMAIL:</b>	<a href="mailto:consumer_protection@ag.idaho.gov">consumer_protection@ag.idaho.gov</a> <a href="http://www.ag.idaho.gov">www.ag.idaho.gov</a>

**LAWRENCE G. WASDEN**

ATTORNEY GENERAL  
STATE OF IDAHO



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