

**48-518. Time of taking effect — Repeal of prior acts — Intent of act.** — This act shall be in force and effect on July 1, 1996, but shall not affect any suit, proceeding or appeal then pending. All acts relating to marks and parts of any other acts inconsistent herewith are hereby repealed on the effective date of this act, provided that as to any application, suit, proceeding or appeal, and for that purpose only, pending at the time this act takes effect the repeal shall be deemed not to be effective until final determination of said pending application, suit, proceeding or appeal.

The intent of this act is to provide a system of state trademark registration and protection substantially consistent with the federal system of trademark registration and protection under the trademark act of 1946, as amended. To that end, the construction given the federal act should be examined as persuasive authority for interpreting and construing this act.

**History.**  
I.C., § 48-518, as added by 1996, ch. 404, § 2, p. 1336.

#### STATUTORY NOTES

##### Federal References.

The trademark act of 1946 is generally compiled as 15 U.S.C. § 1051 et seq.

##### Compiler's Notes.

The term "this act" throughout the section

refers to S.L. 1996, ch. 404, which is compiled as §§ 48-501 to 48-518.

The phrase "the effective date of this act" in the first paragraph refers to the effective date of S.L. 1996, chapter 404, which was effective July 1, 1996.

### CHAPTER 6

## CONSUMER PROTECTION ACT

**SECTION.**  
48-601. Short title and purpose.  
48-602. Definitions.  
48-603. Unfair methods and practices.  
48-603A. Unfair solicitation practices.  
48-603B. Unfair tax return preparation practices.  
48-603C. Unconscionable methods, acts or practices.  
48-603D. Unfair telephone services — Unordered goods and services — Disclosure to consumers.  
48-603E. Unfair bulk electronic mail advertisement practices.  
48-603F. Mortgage loan modification fees.  
48-604. Intent of legislature — Attorney general to make rules and regulations.  
48-605. Exceptions to chapter.  
48-606. Proceedings by attorney general.

**48-601. Short title and purpose.** — 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.

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.

**History.**  
1971, ch. 181, § 2, p. 847; am. 1990, ch. 273, § 1, p. 766.

#### STATUTORY NOTES

##### Cross References.

Chain or pyramid distributor schemes, prohibited, penalties, § 18-3101.

##### Prior Laws.

Former Chapter 6 which comprised S.L.

1965, ch. 293 §§ 1 to 6, was repealed by S.L. 1971, ch. 181, § 1.

##### Compiler's Notes.

The term "this act" refers to S.L. 1971, ch. 181, which is compiled as §§ 48-601 to 48-603, 48-604 to 48-608 and 48-610 to 48-619.

#### JUDICIAL DECISIONS

##### ANALYSIS

##### Application.

Collection of debts.

##### In General.

Instruction.

Harmless error.

Legislative intent.

Medical malpractice.

Price negotiations.

Statutory damages.

Written sales presentation.

##### Application.

The Idaho consumer protection act does not expressly include or exclude commercial transactions and is applicable to protect the ultimate consumer of a product, who intends to use it in a for-profit business. *Myers v. A.O. Smith Harvestors Prods., Inc.*, 114 Idaho 432, 757 P.2d 695 (Ct. App. 1988).

Individuals selling real property for investment were subject to this chapter, although they were not in the business of selling such property as owners or brokers where the real property was within the definition of "goods" in § 48-602(6) and its sale was "trade" or "commerce." *White v. Mock*, 140 Idaho 882, 757 P.2d 356 (2004).

##### Collection of Debts.

The collection of debts arising from sales of goods and services is subject to the provisions of this chapter. *Western Acceptance Corp. v. Jones*, 117 Idaho 399, 769 P.2d 214 (1990).

##### In General.

This chapter prohibits unfair methods of competition and unfair or deceptive acts or practices in the conduct of trade or commerce within the State of Idaho. *State ex rel. Sidwell v. Master Distrib., Inc.*, 101 Idaho 471/615 P.2d 116 (1980).

##### Instruction.

##### — Harmless Error.

Where, although the jury was not instructed under this chapter, it was instructed regarding the common law fraud claims and the plaintiffs presented no sound basis for a jury to reach a different result under this chapter, the court's refusal to present a claim under this chapter to the jury, even if error, constituted harmless error. *Myers v. A.O. Smith Harvestors Prods., Inc.*, 114 Idaho 432, 757 P.2d 695 (Ct. App. 1988).

##### Legislative Intent.

The intent of the legislature is that this chapter be liberally construed to effect the legislative intent to deter deceptive or unfair trade practices and to provide relief for consumers exposed to proscribed practices. *Western Acceptance Corp. v. Jones*, 117 Idaho 399, 769 P.2d 214 (1990).

##### Medical Malpractice.

Plaintiffs must proceed in a medical malpractice action under the negligence standard set forth in § 6-1012; therefore, the plaintiffs could not bring a cause of action under this chapter for the defendants' failure to provide adequate health care after holding them-

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selves out as being knowledgeable and capable of providing adequate health care. *Keyser v. St. Mary's Hosp.*, 662 F. Supp. 191 (D. Idaho 1987).

#### Price Negotiations.

Where the testimony of 15 consumers and two salesmen for a water conditioner salesman indicated that no price negotiations or bargaining occurred during the sale of water conditioner units, and other evidence indicated that all the units sold in the state were sold at the same so-called special discount price, the evidence did not support the trial court's finding that the price of the water conditioners was subject to negotiation or bargaining. *State ex rel. Kidwell v. Master Distrib., Inc.*, 101 Idaho 447, 615 P.2d 116 (1980).

#### Statutory Damages.

In a property sale dispute, the trial court's failure to award statutory damages for a

violation of this chapter was error. *White v. Mock*, 140 Idaho 882, 104 P.3d 356 (2004).

#### Written Sales Presentation.

Where in an action brought by the attorney general under this chapter, 15 consumers testified that they purchased water conditioner units from salesmen who read verbatim from a written script prepared by the manufacturer or that the salesmen delivered what appeared to be a memorized sales presentation, and several salesmen testified that the written sales presentation was used in all their sales, the evidence did not support the trial court's finding that the complaints of the individual consumers who testified at the trial could not be correlated with all sales made by the defendants. *State ex rel. Kidwell v. Master Distrib., Inc.*, 101 Idaho 447, 615 P.2d 116 (1980).

**Cited in:** *Irwin Rogers Ins. Agency, Inc. v. Murphy*, 122 Idaho 270, 833 P.2d 128 (Ct. App. 1992); *Wiggins v. Peachtree Settlement Funding*, 273 B.R. 839 (Bankr. D. Idaho 2001).

#### RESEARCH REFERENCES

**A.L.R.** — Practices forbidden by state deceptive trade practice and consumer protection acts — Pyramid or Ponzi or referral sales schemes. 48 A.L.R.6th 511.

#### 48-602. Definitions. — 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 situated, 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.

#### History.

1971, ch. 161, § 3, p. 847; am. 1973, ch. 285, § 1, p. 601; am. 1993, ch. 102, § 1, p. 256.

#### STATUTORY NOTES

##### Prior Laws.

Former § 48-602 was repealed. See Prior Laws, § 48-601.

##### Compiler's Notes.

The term "this act" in the introductory

#### JUDICIAL DECISIONS

##### ANALYSIS

##### Misrepresentations.

"Sale" as crucial event. *Idaho*.

##### Misrepresentations.

In action by plaintiff who had purchased property from third party, against original owners, who had sold property to third party, claiming that fence lines failure to match property described in deed was a material misrepresentation, the court found that there was no actionable misrepresentation under this chapter, because there was no difference between what purchaser received and the notes and bounds description in the contract. *Pen v. Neah*, 142 Idaho 775, 133 P.3d 1240 (2006).

##### "Sale" As Crucial Event.

The collection of a debt arising out of a sale of goods or services is subject to the provisions of this chapter, even when the collection of the debt is by a third party who has purchased the debt from the seller; it is the sale that brings the debt into existence that is the crucial event, and debts that do not arise out of the sale of goods and services subject to the provisions of this chapter are not covered. *Western Acceptance Corp. v. Jones*, 117 Idaho 399, 788 P.2d 214 (1990).

##### Trade.

The company, which specialized in purchasing structured personal injury and other settlement payment streams for cash and then reselling the settlements or annuities for a profit, engaged in trade or commerce as provided under subsection (2) of this section, where the company attempted to purchase annuity payments for profit, and where the company advertised its product through use of television commercials. *Wiggins v. Peachtree Settlement Funding*, 273 B.R. 839 (Bankr. D. Idaho 2001).

Individuals selling real property for investment were subject to this chapter, although they were not in the business of selling such property as owners or brokers where the real property was within the definition of "goods" and its sale was "trade" or "commerce." *White v. Mock*, 140 Idaho 882, 104 P.3d 356 (2004).

**Cited in:** *Myers v. A.O. Smith Harvestore Prods., Inc.*, 114 Idaho 432, 757 P.2d 695 (Ct. App. 1988).

**48-603. Unfair methods and practices. — 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 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.

#### History.

1971, ch. 181, § 4, p. 847; am. 1973, ch. 285, § 2, p. 601; am. 1990, ch. 273, § 2, p. 766; am.

2002, ch. 358, § 1, p. 1015; am. 2002, ch. 361, § 2, p. 1019; am. 2013, ch. 54, § 16, p. 108.

#### STATUTORY NOTES

##### Prior Laws.

Former § 48-603 was repealed. See Prior Laws, § 48-601.

##### Amendments.

This section was amended by two 2002 acts which appear to be compatible and have been compiled together.

The 2002 amendment by ch. 358, § 1, effective July 1, 2002, in subsection (19), inserted in the ultimate consumer" following "by selling or offering to sell", substituted "pharmaceuticals" for "medicine" following "fuel or food", added "in determining whether a price is exorbitant or excessive, the court shall take into consideration the facts and circumstances, including, but not limited to:" added subsections 19(a), (b), (c); and added the last sentence.

The 2002 amendment by ch. 361, § 2, effective March 27, 2002, added the section on at the end of subsection (18) and added subsection (19).

The 2013 amendment, by ch. 54, deleted subsection (37) of preceding section 28-41-301, Idaho Code" near the end of subsection (18).

##### Legislative Intent.

Section 1 of S.L. 2002, ch. 361 provides: "The Legislature finds that during emergencies or disasters, some persons may take unfair advantage of consumers by greatly increasing prices for essential goods and services. While the pricing of consumer goods and services is generally best left to the marketplace under ordinary conditions, when a declared state of emergency or disaster results in abnormal disruptions of the market, the public interest requires that excessive and unjustified increases in the prices of essential consumer goods and services be prohibited."

##### Compiler's Notes.

The term "this act" in the last paragraph

refers to S.L. 2002, ch. 356, which is compiled as this section only.

## JUDICIAL DECISIONS

### ANALYSIS

Contract or other document.

— Failure to deliver.

Goods.

Legislative intent.

Liability for sales program.

Misrepresentations.

— "Sale" as crucial event.

Tendency to deceive.

Trade names.

Unconscionable conduct.

**Contract or Other Document.**

— **Failure to Deliver.**

Insurance company's failure to give insured a copy of a promissory note signed by insured did not violate this chapter; the debt underlying the promissory note arose from the purchase of insurance through an insurance agency which is a sale explicitly excluded from this chapter. *Irvin Rogers Ins. Agency, Inc. v. Murphy*, 122 Idaho 270, 833 P.2d 128 (Ct. App. 1992).

**Goods.**

Although "goods" defined under the act include intangible property which could encompass money, it would take a strained construction of the act to be able to hold that the signing of a personal guarantee for a loan to a corporation was "purchase of goods." *Idaho First Nat'l Bank v. Wells*, 100 Idaho 256, 596 P.2d 429 (1979).

**Legislative Intent.**

The intent of the legislature is that this chapter be liberally construed to effect the legislative intent to deter deceptive or unfair trade practices and to provide relief for consumers exposed to proscribed practices. *Western Acceptance Corp. v. Jones*, 117 Idaho 399, 788 P.2d 214 (1990).

**Liability for Sales Program.**

Where Master Manufacturing Company created and furnished the sales program utilized by Master Distributors in Idaho, participated in the hiring and training of Master Distributors' sales personnel, was involved on a nearly daily basis with the ongoing operation of the sales program in Idaho, and knowingly distributed its products in Idaho through Master Distributors, Inc., Master Manufacturing Company was subject to liability under this chapter for any unfair or deceptive practices utilized in the Idaho sales program. *State ex rel. Kitwell v. Master*

*Distrib., Inc.*, 101 Idaho 447, 615 P.2d 116 (1980).

**Trade Names.**

The unauthorized advertising, display and/or sale by defendant of merchandise bearing plaintiffs' "private label" trade-names and/or trade-marks constituted unfair and deceptive trade practices in violation of this section. *J.C. Penney Co. v. Parrish Co.*, 339 F. Supp. 728 (D. Idaho 1972).

**Unconscionable Conduct.**

In a case of alleged price-fixing by manufacturers, the district court, after dismissing an unfair competition claim, did not err in denying the state's request to amend its complaint to allege a consumer protection claim, pricing of products that are not sold directly to

consumers is not an unconscionable act within the meaning of this section, which addresses the prevention of outrageous transactions involving vulnerable consumers. *State v. Daicel Chem. Indus., Ltd.*, 141 Idaho 102, 106 P.3d 428 (2005).

Well driller misled landowners by providing them with unneeded drilling services; the well was drilled much deeper than necessary and the driller continued to drill after encountering low temperature geothermal conditions which were not appropriate for a cold water domestic use well. *Dusriya v. Fillmore*, 154 Idaho 27, 293 P.3d 651 (2013).

**Cited in:** *McNeil v. Gisler*, 100 Idaho 693, 604 P.2d 707 (1979); *Yellow Pine Water User's Ass'n v. Inel*, 105 Idaho 349, 670 P.2d 574 (1983).

## RESEARCH REFERENCES

*Am. Jur.* — 54A Am. Jur. 2d, Monopolies, Restraints of Trade, and Unfair Trade Practices, § 1131 et seq.

*ALR.* — World wide web domain as vi-

**48-603A. Unfair solicitation practices.** — (1) It is unlawful for any person to solicit a sale or order for sale of goods or services at other than appropriate trade premises, in person or by means of telephone, without clearly affirmatively and expressly revealing at the time the person initially contacts the prospective buyer, and before making any other statement, except a greeting, or asking the prospective buyer any other questions, that the purpose of the contact is to effect a sale, by doing all of the following:

(a) Stating the identity of the person making the solicitation;

(b) Stating the trade name of the person represented by the person making the solicitation;

(c) Stating the kind of goods or services being offered for sale;

(d) And, in the case of an "in person" contact, the person making the solicitation shall, in addition to meeting the requirements of paragraphs (a), (b) and (c) of this section, show or display identification which states the information required by paragraphs (a) and (b) of this section as well as the address of the place of business of one (1) of such persons so identified.

(2) It is unlawful for any person, in soliciting a sale or order for the sale of goods or services at other than his appropriate trade premises, in person by telephone, to use any plan, scheme, or ruse which misrepresents his true status or mission for the purpose of making such sale or order for the sale of goods or services.

(3) It is unlawful in the sale or offering for sale of goods or services for any person conducting a mail order or catalog business in this state and utilizing a post office box address to fail to disclose the legal name under which business is done and the complete street address from which business is actually conducted in all advertising and promotional materials, including order blanks and forms.

*Distrib., Inc.*, 101 Idaho 447, 615 P.2d 116 (1980).

**Misrepresentations.**

In action by plaintiff who had purchased property from third party, against original owners, who had sold property to third party, claiming that fence lines' failure to match property described in deed was a material misrepresentation, the court found that there was no actionable misrepresentation under this chapter, because there was no difference between what purchaser received and the metes and bounds description in the contract. *Fenn v. Noah*, 142 Idaho 775, 133 P.3d 124 (2006).

Because a creditor who sued his debtor attorneys did not allege that he entered into contractual relationship with the attorneys, he lacked standing under § 48-608(1), moreover, he failed to identify specific prohibitive actions deemed to be unfair or deceptive. *McNichols*, 149 Idaho 826, 243 P.3d 64 (2010).

**"Sale" as Crucial Event.**

The collection of a debt arising out of a sale of goods or services is subject to the provisions of this chapter, even when the collection of the debt is by a third party who has purchased the debt from the seller; it is the sale that brings the debt into existence that is the crucial event, and debts that do not arise out of the sale of goods and services subject to provisions of the chapter are not covered. *Western Acceptance Corp. v. Jones*, 117 Idaho 399, 788 P.2d 214 (1990).

**Tendency to Deceive.**

An act or practice is unfair if it is shown to possess a tendency or capacity to deceive consumers, and neither proof of an intent to deceive nor any actual damage to the public need be shown in order to establish a trade practice as unfair or deceptive. *State ex rel.*

**History.**

I.C., § 48-603A, as added by 1973, ch. 285, § 3, p. 601.

**48-603B. Unfair tax return preparation practices.** — (1) As used in this section, unless the context otherwise requires:

(a) "Tax preparer" means a person who, for a fee, engages in the business of assisting with, or preparing, federal, state, or local government income tax returns.

(b) "Fee" means any moneys or valuable consideration paid or promised to be paid for services rendered or to be rendered by any person or persons functioning as or conducting the business of a tax preparer.

(2) The following acts or omissions related to the conduct of the business of the tax preparer, which are done by the tax preparer or any employee, partner, officer, or member of the tax preparer are unlawful:

(a) Making or authorizing in any manner or by any means whatever any statement written or oral which is untrue or misleading.

(b) Causing or allowing a consumer to sign any document in blank relating to a tax return thereof.

(c) Failing or refusing to give to a consumer a copy of any document requiring his signature, as soon as the consumer signs such document.

(d) Failing to maintain a copy of any tax return prepared for a consumer for the applicable statute of limitation period on federal tax returns and state tax returns.

(e) Making false promises of a character likely to influence, persuade, or induce a consumer to authorize the tax preparation service.

(3)(a) It is unlawful for any person, including an individual, firm, corporation, association, partnership, joint venture, or any employee or agent thereof, to use or disclose any information obtained in the business of preparing federal or state income tax returns or assisting taxpayers in preparing such returns unless such use or disclosure is within any of the following:

(i) Consented to in writing by the taxpayer in a separate document

(ii) Expressly authorized by state or federal law.

(iii) Necessary to the preparation of the return.

(iv) Pursuant to court order.

(b) For the purposes of this section, a person is engaged in the business of preparing federal or state income tax returns or assisting taxpayers in preparing such returns if he does either of the following:

(i) Advertises, or gives publicity to the effect that he prepares or assists others in the preparation of state or federal income tax returns.

(ii) Prepares or assists others in the preparation of state or federal income tax returns for compensation.

(4)(a) It is unlawful for any person, including any individual, association, partnership, joint venture, or any employee or agent thereof, to fail to sign any state income tax return, or to fail to include his name, address, and social security number or preparer identification number issued under 26 U.S.C. 6109 on any state income tax return, which he prepares for another for compensation, or which he assists another in the preparation of for compensation.

(b) It is unlawful for any corporation to fail to include its name and address on any state income tax return which it prepares for another for compensation, or which it assists another in the preparation of for compensation.

(5) A person who renders mere mechanical assistance in the preparation of a return, declaration, statement, or other document is not considered, for the purposes of this section, as preparing the return, declaration, statement or other document.

**History.**

I.C., § 48-603B, as added by 1973, ch. 285, § 4, p. 601; am. 1993, ch. 102, § 2, p. 256; am. 2000, ch. 26, § 2, p. 45.

**STATUTORY NOTES****Effective Dates.**

Section 8 of S.L. 2000, ch. 26 declared an emergency retroactively to January 1, 2000 and approved March 3, 2000.

**48-603C. Unconscionable methods, acts or practices.** — (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.

**History.**

I.C., § 48-603C, as added by 1990, ch. 273, § 5, p. 768.

**JUDICIAL DECISIONS****Price Fixing.**

In a case of alleged price-fixing by manufacturers, the district court, after dismissing an unfair competition claim, did not err in denying the state's request to amend its complaint to allege a consumer protection claim; pricing of products that are not sold directly to consumers is not an unconscionable act within the meaning of this section, which addresses the prevention of outrageous transactions involving vulnerable consumers. *State v. Daitel Chem. Indus., Ltd.*, 141 Idaho 102, 106 P.3d 428 (2005).

Cited in: *Wiggins v. Peachtree Settlement Funding*, 273 B.R. 839 (Bankr. D. Idaho 2001).

**48-603D. Unfair telephone services — Unordered goods and services — Disclosure to consumers. — (1)** As used in this section:

- (a) "Telecommunications provider" means a person that provides telecommunications service.
- (b) "Telecommunications service" means the offering for sale of the conveyance of voice, data or other information at any frequency over any part of the electromagnetic spectrum. Telecommunications service does not include cable television service or broadcast service.
- (c) "Telecommunications service agreement" means a contract between the telecommunications provider and a consumer for telecommunications service that is provided to the consumer on a continuing or periodic basis. The term includes an oral, written, or electronically recorded contract and includes any material amendment to an existing contract.
- (2)(a) Section 48-605, Idaho Code, notwithstanding, it is unlawful for a telecommunications provider to request a change in a consumer's local exchange or interexchange carrier without the consumer's verified consent.
- (b) For purposes of subsection (2)(a) of this section:
  - (i) It is the responsibility of the telecommunications provider requesting a change in a telephone service subscriber's local exchange or interexchange carrier to verify that the consumer has authorized the change. A telecommunications provider that does not verify a consumer's change in his or her local exchange or interexchange carrier in accordance with the verification procedures, if any, adopted by the federal communications commission under the telecommunications act of 1996, including subpart K of 47 CFR 64, as those procedures are from time to time amended, commits an unlawful practice within the meaning of this act. A telephone company, wireless carrier or telecommunications carrier providing local exchange service who has been requested by another telecommunications provider to process a change in a consumer's carrier is only liable under this section if it knowingly participates in processing a requested change that is unauthorized or not properly verified; and
  - (ii) Compliance with applicable federal verification procedures is a complete defense to an allegation of consumer fraud under subsection (2)(a) of this section.

telecommunications service agreement with the telecommunications provider.

- (b) The notice shall clearly and conspicuously disclose to the consumer that the consumer's local exchange or interexchange carrier has been changed. The notice shall also advise the consumer that the consumer may change back to the previous carrier or select a new carrier by calling the previous carrier or the consumer's preferred carrier. The notice shall also provide the consumer with a toll-free number to call for further information.
- (c) The notice shall be sent on or before the fifteenth day after the consumer enters into the telecommunications service agreement, or on or before the day the telecommunications provider first bills the consumer under the agreement, whichever is later.
- (d) The notice must be a separate document sent for the sole purpose of advising the consumer of his or her entering into a telecommunications service agreement. The notice shall also not be combined with any sweepstakes entry form in the same document or other like inducement.
- (e) The sending of this notice shall not constitute a defense to a charge that a consumer did not consent to enter into a telecommunications service agreement or that the consumer's consent was verified according to federal law.
- (f) Compliance with the notification requirements, if any, adopted by the federal communications commission under the telecommunications act of 1996, including subpart K of 47 CFR 64, shall be deemed to be compliance with this subsection.
- (g) A consumer who selects a different carrier within three (3) days after receiving the notice under subsection (4)(a) of this section may not be charged a cancellation charge or disconnect fee unless the consumer has more than five (5) telephone lines and has entered into a written agreement which specifies such charges and fees, and the telecommunications provider has complied with the verification procedures under subsection (2)(b) of this section.

History.  
IC, § 48-603D, as added by 1998, ch. 274, § 1, p. 904.

**STATUTORY NOTES**

**Federal References.**  
The telecommunications act of 1996, referred to in paragraph (2)(b)(ii) and paragraph (4)(f), generally appears as 47 U.S.C.S. § 1511.

**Effective Dates.**  
Section 2 of S.L. 1998, ch. 274 declared an emergency. Approved March 24, 1998.

The term "this act" at the end of the second

sentences in paragraph (2)(b)(i) refers to S.L. 1998, ch. 274, which is codified as this section.

**48-603E. Unfair bulk electronic mail advertisement practices. —**

- (a) For purposes of this section, unless the context otherwise requires:
  - (i) "Bulk electronic mail advertisement" means an electronic message,

containing the same or similar advertisement, which is contemporaneously transmitted to two (2) or more recipients, pursuant to an internet intranet computer network.

(b) "Computer network" means a set of related, remotely connected devices and communication facilities, including two (2) or more computers, with the capability to transmit data among them through communication facilities.

(c) "Interactive computer service" means an information service, system or access software provider that provides or enables computer access to multiple users to a computer server, including specifically a service or system that provides access to the internet, and such systems operated by services offered by a library or an educational institution.

(d) "Recipient" means a person who receives any bulk electronic mail advertisements.

(2) Any person who uses an interactive computer service to initiate or cause the sending or transmittal of any bulk electronic mail advertisement shall provide an electronic mail address readily identifiable in the bulk electronic mail advertisement to which the recipient may send a request declining such mail.

(3) It is unlawful for a person to use an interactive computer service to initiate or cause the sending or transmittal of any bulk electronic mail advertisement to any recipient that the sender knows, or has reason to know, engages in any of the following:

(a) Uses the name of a fictitious name of a third party in the return address field without the permission of the third party.

(b) Misrepresents any information in identifying the point of origin of the transmission path of the bulk electronic mail advertisement.

(c) Fails to contain information identifying the point of origin of the transmission path of the bulk electronic mail advertisement.

(d) Sends or transmits, at any time after five (5) business days of declination, any bulk electronic mail advertisement to a recipient who provided the sender with a request declining the receipt of such advertisements.

(4) Pursuant to section 48-608, Idaho Code, a recipient that receives a bulk electronic mail advertisement in violation of this section may bring an action to recover actual damages. The recipient, in lieu of actual damages, may elect to recover from the person transmitting or causing to be transmitted such bulk electronic mail advertisement the greater of one hundred dollars (\$100) for each bulk electronic mail advertisement transmitted in violation of this section or one thousand dollars (\$1,000).

(5) This section does not apply to any of the following:

(a) A person, including an interactive computer service, who provides users with access to a computer network, and as part of that service transmits electronic mail on behalf of those users, unless such person transmits bulk electronic mail advertisements on behalf of those users which the person knows, or should have known, were transmitted in violation of this section.

(b) Electronic mail advertisements which are accessed by the recipient from an electronic bulletin board.

(c) A person who provides users with access at no charge to electronic mail, including receiving and transmitting bulk electronic mail advertisements, and, as a condition of providing such access, requires such users to receive unsolicited advertisements.

(d) The transmission of bulk electronic mail advertisements from an organization or similar entity to the members of such organization.

(6) An interactive computer service is not liable under this section for an action voluntarily taken in good faith to block or prevent the receipt or transmission through its service of any bulk electronic mail advertisement which is reasonably believed to be in violation of this section.

History.  
I.C. § 48-603E, as added by 2000, ch. 423,  
§ 1, p. 1373.

#### Effective Dates.

Section 2 of S.L. 2000, ch. 423, provided

that the act shall be in full force and effect on and after July 1, 2000.

#### STATUTORY NOTES

##### RESEARCH REFERENCES

A.L.R. — World wide web domain as violating state trademark protection statute or unfair trade practices act. 96 A.L.R.5th 167. Validity, construction, and application of federal and state statutes regulating unsolicited e-mail or "spam". 10 A.L.R.6th 1.

**48-603F. Mortgage loan modification fees.** — (1) For purposes of this section, unless the context otherwise requires:

(a) "Fee" means any item of value including, but not limited to, goods or services.

(b) "Loan modification activities" is defined in section 26-31-201(3), Idaho Code.

(2) Charging or collecting any fee in connection with mortgage loan modification activities shall constitute a violation of the Idaho consumer protection act, unless the person charging or collecting such fees is licensed pursuant to chapter 20, title 54, Idaho Code, or licensed, exempt or excluded from licensing pursuant to part 2 or 3, chapter 31, title 26, Idaho Code.

History.  
I.C. § 48-603F, as added by 2011, ch. 323,  
§ 3, p. 939.

#### STATUTORY NOTES

#### Effective Dates.

Section 4 of S.L. 2011, ch. 323 provided:

"This act shall be in full force and effect on and after September 1, 2011."

**48-604. Intent of legislature — Attorney general to make rules and regulations.** — (1) It is the intent of the legislature that in construing this act due consideration and great weight shall be given to the interpretation

tation 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)), and 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.

#### History.

1971, ch. 181, § 5, p. 847; am. 1973, ch. 285, § 5, p. 601.

#### STATUTORY NOTES

##### Cross References.

Attorney general, § 67-1401 et seq.

##### Prior Laws.

Former § 48-604 was repealed. See Prior Laws, § 48-601.

##### Compiler's Notes.

The term "this act" in subsections (1) and

(2) refers to S.L. 1971, ch. 181, which is compiled as §§ 48-601 to 48-603, 48-604, 48-608 and 48-610 to 48-619.

The references enclosed in parentheses so appeared in the law as enacted.

#### JUDICIAL DECISIONS

##### Federal Law.

Federal case law as it has developed under § 5(2)(1) of the Federal Trade Commission Act, although not binding, is persuasive in application of this chapter. *State ex rel. Kidwell v. Masfer Distrib., Inc.*, 101 Idaho 447, 615 P.2d 116 (1980).

Cited in: Idaho First Nat'l Bank v. Wells, 100 Idaho 286, 596 P.2d 429 (1979); *Hansen Glass*, 102 Idaho 785, 640 P.2d 1186 (Oct. 1982); *Myers v. A.O. Smith Harvestore Prod. Inc.*, 114 Idaho 432, 757 P.2d 695 (Oct. 1988).

##### 48-605. Exceptions to chapter. — 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, unfair or deceptive acts or practices in the business of insurance.

#### History.

1971, ch. 181, § 6, p. 847.

#### STATUTORY NOTES

##### Cross References.

Director of department of insurance, § 41-102.  
Public utilities commission, § 61-201.

##### Prior Laws.

Former § 48-605 was repealed. See Prior Laws, § 48-601.

##### Compiler's Notes.

The name of the commissioner of insurance appeared in the law as enacted.

has been changed to the director of the department of insurance on the authority of S.L. 1974, ch. 286, § 1 and S.L. 1974, ch. 11, § 3 (§ 41-203).

The term "this act" in the introductory paragraph refers to S.L. 1971, ch. 181, which is compiled as §§ 48-601 to 48-603, 48-604 to 48-608 and 48-610 to 48-619.

The reference enclosed in parentheses so appeared in the law as enacted.

#### JUDICIAL DECISIONS

##### Insurance.

Insurance company's failure to give insured copy of a promissory note signed by insured did not violate this chapter; the debt underlying the promissory note arose from the

purchase of insurance through an insurance agency which is a sale explicitly excluded from the act's provisions. *Irwin Rogers Ins. Agency, Inc. v. Murphy*, 122 Idaho 270, 833 P.2d 128 (Ct. App. 1992).

**48-606. Proceedings by attorney general. — (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 with consent judgment as in this chapter provided.

(4) In lieu of investigating 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; 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 in 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 appropriations 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.

#### History.

1971, ch. 181, § 7, p. 847; am. 1973, ch. 285, § 6, p. 601; am. 1990, ch. 273, § 4, p. 766; am.

1991, ch. 243, § 1, p. 592; am. 1993, ch. 127, § 3, p. 256; am. 2001, ch. 61, § 1, p. 112.

#### STATUTORY NOTES

##### Cross References.

Attorney general, § 67-1401 et seq. General fund, § 67-1205.

##### Prior Laws.

Former § 48-606 was repealed. See Prior Laws, § 48-601.

#### JUDICIAL DECISIONS

##### Notice of Proceedings.

Where the trial court testimony indicated that the manufacturer of water conditioning

assurance of voluntary compliance by the distributor of these units, and that the manufacturer approved changes made in the sales presentation script pursuant to the assurance, the attorney general's written notice to the distributor of the water conditioning units was adequate notice, under subsection (2) of

this section, to the manufacturer that legal proceedings under this chapter were contemplated as a result of the sales program in which the manufacturer was involved. State ex rel. Kidwell v. Master Distrib., Inc., 101 Idaho 447, 615 P.2d 116 (1980).

**48-607. Additional relief by court authorized.** — 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 [consumer protection fund] 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 liquidation 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.

#### History.

1971, ch. 181, § 8, p. 847; am. 1973, ch. 285, § 7, p. 601; am. 1990, ch. 273, § 5, p. 766.

#### STATUTORY NOTES

##### Cross References.

Attorney general, § 67-1401 et seq.

##### Compiler's Notes.

The bracketed insertion in the last sentence

in the introductory paragraph was added by the compiler to correct the name of the referenced fund.

#### JUDICIAL DECISIONS

##### ANALYSIS

burden of proof. The bracketed insertion in the last sentence of court.

Interested consumers.  
Restitution.

#### Burden of Proof.

The state need not prove in a consumer protection action that consumers in fact relied upon deceptions or misrepresentations made by the defendant and that the defendant's acts were a proximate cause of the defendant's acquisition of moneys from consumers in order for the state to obtain restitutionary relief for Idaho consumers. State ex rel. Kidwell v. Master Distrib., Inc., 101 Idaho 447, 615 P.2d 116 (1980).

#### Discretion of Court.

Restitution is not an automatic or mandatory remedy for violations of this chapter; the district court's discretion to award restitutionary relief should be exercised with a view toward the purposes of the chapter. State ex rel. Kidwell v. Master Distrib., Inc., 101 Idaho 447, 615 P.2d 116 (1980).

#### Interested Consumers.

An order granting consumers restitu-

tionary relief or permitting them to rescind their purchase agreements with a water conditioner distributor may be applied to all consumers affected by the same trade practices found by the court to be unfair or deceptive under this chapter, since equitable relief need not be limited to the consumer witnesses who testified at trial. State ex rel. Kidwell v. Master Distrib., Inc., 101 Idaho 447, 615 P.2d 116 (1980).

#### Restitution.

Restitutionary relief is appropriate in an action brought by the attorney general under this chapter, where such relief would be required to reestablish the status quo which existed prior to the defendant's deceptive or unfair acts. State ex rel. Kidwell v. Master Distrib., Inc., 101 Idaho 447, 615 P.2d 116 (1980).

Cited in: Yellow Pine Water Users Ass'n v. Imel, 105 Idaho 349, 670 P.2d 64 (1983).

**48-608. Loss from purchase or lease — Actual and punitive damages.** — (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 of 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.

#### History.

§ 5, p. 601; am. 1990, ch. 273, § 6, p. 766; am. 1971, ch. 181, § 9, p. 647; am. 1973, ch. 285, 2008, ch. 287, § 1, p. 749.

**STATUTORY NOTES**

**Cross References.** Attorney general, § 67-1401 et seq. Amendments. The 2008 amendment, by ch. 257, in sub-

stances and principles of law, and without arbitrary disregard for those facts and principles of justice, that exercise of discretion has not been abused and will not be disturbed. *Becker v. Homeguard Sys.*, 205 Idaho 156, 868 P.2d 1169 (Ct. App. 1993).

**Goods.**

Although "goods" defined under the act include intangible property which could encompass money, it would take a strained construction of the act to be able to hold that the signing of a personal guarantee for a loan to a corporation was "purchase of goods." *Idaho First Nat'l Bank v. Wells*, 100 Idaho 256, 596 P.2d 429 (1979).

**Payment of Legal Obligation.**

When a consumer merely pays an existing legal obligation, he does not suffer damages although there may be involved deceptive acts practices. *Yellow Pine Water User's Ass'n v. Deal*, 105 Idaho 349, 670 P.2d 54 (1983).

Where consumers had paid no amount exceeding their admitted legal obligation to warranty authority, they had not suffered "ascertainable loss" such as would entitle them to recovery damages under this section. *Yellow Pine Water User's Ass'n v. Intel*, 105 Idaho 349, 670 P.2d 54 (1983).

**Prevailing Party.**

In an action by homeowners against seller of automatic heating systems, trial court did not exercise its discretion in determining that homeowners were the prevailing parties despite the fact that majority of homeowners' claims were dismissed, that jury awarded damages amounting to only 3% of the recovery sought, and that seller prevailed on counterclaim against builder. *Decker v. Homeguard Sys.*, 105 Idaho 58, 666 P.2d 319 (Ct. App. 1983).

The amount to be awarded as attorney's fees was properly identified as a matter of discretion; however, the trial court improperly exercised its discretion in calculating the amount of fees on the basis of prevailing attorney's and the concomitant fractionating of the contingent fee. *Nalen v. Jenkins*, 113 Idaho 79, 741 P.2d 366 (Ct. App. 1987).

The intent of this section is to compensate a prevailing plaintiff for the costs of bringing an action under this chapter, and to further that intent, attorney fees should be allowed on appeal for the prevailing plaintiff. *Nalen v. Jenkins*, 113 Idaho 79, 741 P.2d 366 (Ct. App. 1987).

The fact that an award is made to a party does not necessarily require that amount to be limited to the party-attorney agreement; the statute provides for the award of an objective "reasonable" fee, and such a fee may be higher or lower than what the party must pay the attorney under their agreement. *Nalen v. Jenkins*, 113 Idaho 79, 741 P.2d 366 (Ct. App. 1987).

*v. Jenkins*, 114 Idaho 973, 763 P.2d 1081 (Ct. App. 1988).

The trial court did not err in determining that the plaintiffs had to suffer "ascertainable damages" under subsection (1) of this section before they could be considered prevailing parties and awarded attorney fees. *Shurtliff v. Northwest Pools, Inc.*, 120 Idaho 263, 815 P.2d 461 (Ct. App. 1991).

In denying attorney fees to both parties, the trial court did not venture outside the boundaries of its discretion, nor did it act inconsistently with the legal standards applicable to the award of attorney fees; the trial court's decision to require each party to bear its own fees appeared to have been reached through the exercise of reason. *Israel v. Leachman*, 139 Idaho 24, 72 P.3d 864 (2003).

In a property sale dispute in which one ruling in favor of the sellers was overturned on appeal, while several other rulings in favor of the sellers were affirmed, the buyer was not entitled to attorney fees on appeal because he was not the prevailing party. *White v. Mock*, 140 Idaho 882, 104 P.3d 856 (2004).

Dealership was not entitled to attorney's fees where it did not prevail on appeal. *Dan Wisbold Ford, Inc. v. Universal Computer Consulting Holding, Inc.*, 142 Idaho 235, 127 P.3d 138 (2005).

**Repeated or Flagrant Violations.**

In a suit by distributor against manufacturer, testimony of four ex-distributors from the same time frame and geographical area was relevant to show repeated or flagrant violations of this chapter. *Mac Tools, Inc. v. Griffin*, 126 Idaho 193, 879 P.2d 1126 (1994).

**Standard of Proof.**

This section is remedial in nature; when a party brings an action for violation of this chapter, that party does not have to show an extreme deviation from reasonable standards of conduct in order to be awarded punitive damages, but rather must show repeated or flagrant violations of this chapter. This section contains its own remedies; the only standard the jury must follow is that prescribed in the chapter itself, i.e., repeated or flagrant violations. *Mac Tools, Inc. v. Griffin*, 126 Idaho 193, 879 P.2d 1126 (1994).

**Standing.**

Because a creditor who sued his debtors' attorneys did not allege that he entered into a contractual relationship with the attorneys, he lacked standing under this section; moreover, he failed to identify specific prohibited actions deemed to be unfair or deceptive, as set forth in §§ 48-603 to 48-603E. *Taylor v. McNichols*, 149 Idaho 826, 243 P.3d 642 (2010).

**Cited in:** *Idaho Power Co. v. Idaho Pub. Utils. Comm'n*, 102 Idaho 744, 639 P.2d 442

**JUDICIAL DECISIONS**

**ANALYSIS**

- Application.
- Attorney's fees.
- Basis for cause of actions.
- Choice of remedies.
- Damages.
- Discretion of court.
- Goods.
- Payment of legal obligation.
- Prevailing party.
- Repeated or flagrant violations.
- Standard of proof.
- Standing.

**Application.** In the 1990 Session Laws the legislature modified subsection (1) of this section in part by deleting the reference to the rules of civil procedure. No reason is indicated for that change. The Supreme Court of Idaho concluded that the rules still apply and that the modification was not intended to be removed from the rules actions pursued under subsection (1) of this section. *Shurtliff v. Northwest Pools, Inc.*, 120 Idaho 263, 815 P.2d 461 (Ct. App. 1991).

Landowners did not treat their agreement with a well driller as void; they sought their alternative remedy for actual damages, which the court granted, and the district court did not treat the remedies as cumulative, but simply pointed out that the landowners would have been entitled to consider the agreement void had they so chosen. *Dusniva v. Fillmore*, 154 Idaho 27, 293 P.3d 651 (2013).

**Attorney's Fees.**

In an action brought by a musician to recover royalties on music, attorney's fees recoverable where a default judgment was entered were limited to the amount stated in a complaint. *Holladay v. Lindsay*, 143 Idaho 767, 152 P.3d 633 (Ct. App. 2006).

Attorney fees were properly awarded by the trial court under against a creditor who brought a frivolous suit against his debtors' attorneys, and fees on appeal also were warranted because the appeal was brought spontaneously and without foundation for the purpose of harassment. *Taylor v. McNichols*, 149 Idaho 826, 243 P.3d 642 (2010).

**Basis for Cause of Actions.**

The language of subsection (1) of this section

tion does not require that a purchase or lease be "completed" in order for an action to be brought; however, since no authority exists for applying this chapter to a merely contemplated transaction, a claim under this chapter involving the sale of property must be based upon a sales contract. *Haastin v. Glass*, 107 Idaho 785, 640 P.2d 1186 (Ct. App. 1982).

**Choice of Remedies.**

In an action to recover earnest money where property seller alleged that the purchaser of a real estate company violated the chapter and, thus, terminated his employment contract with the real estate company, seller had chosen his remedy under subsection (1) of this section and can not later sue to recover actual damages. *Knupe Land Co. v. Robertson*, 151 Idaho 449, 259 P.3d 55 (2011).

**Damages.**

Lessees of a gas station could not recover either actual or statutory damages for station owner's supplying lessees with different brand of gasoline without notifying them of the difference, where lessees failed to prove any ascertainable losses arising from owner's deceptive trade practices. *Jackson Wood*, 859 P.2d 378 (Ct. App. 1993).

**Discretion of Court.**

The determination of who is a prevailing party for the purpose of receiving an award of attorney fees, is committed to the sound discretion of the trial court; that determination will not be disturbed unless an abuse of discretion has occurred. Where the trial court has exercised its discretion after a careful consideration of the relevant factual circum-

*v. Jenkins*, 114 Idaho 973, 763 P.2d 1081 (Ct. App. 1988).

The trial court did not err in determining that the plaintiffs had to suffer "ascertainable damages" under subsection (1) of this section before they could be considered prevailing parties and awarded attorney fees. *Shurtliff v. Northwest Pools, Inc.*, 120 Idaho 263, 815 P.2d 461 (Ct. App. 1991).

In denying attorney fees to both parties, the trial court did not venture outside the boundaries of its discretion, nor did it act inconsistently with the legal standards applicable to the award of attorney fees; the trial court's decision to require each party to bear its own fees appeared to have been reached through the exercise of reason. *Israel v. Leachman*, 139 Idaho 24, 72 P.3d 864 (2003).

In a property sale dispute in which one ruling in favor of the sellers was overturned on appeal, while several other rulings in favor of the sellers were affirmed, the buyer was not entitled to attorney fees on appeal because he was not the prevailing party. *White v. Mock*, 140 Idaho 882, 104 P.3d 856 (2004).

Dealership was not entitled to attorney's fees where it did not prevail on appeal. *Dan Wisbold Ford, Inc. v. Universal Computer Consulting Holding, Inc.*, 142 Idaho 235, 127 P.3d 138 (2005).

**Repeated or Flagrant Violations.**

In a suit by distributor against manufacturer, testimony of four ex-distributors from the same time frame and geographical area was relevant to show repeated or flagrant violations of this chapter. *Mac Tools, Inc. v. Griffin*, 126 Idaho 193, 879 P.2d 1126 (1994).

**Standard of Proof.**

This section is remedial in nature; when a party brings an action for violation of this chapter, that party does not have to show an extreme deviation from reasonable standards of conduct in order to be awarded punitive damages, but rather must show repeated or flagrant violations of this chapter. This section contains its own remedies; the only standard the jury must follow is that prescribed in the chapter itself, i.e., repeated or flagrant violations. *Mac Tools, Inc. v. Griffin*, 126 Idaho 193, 879 P.2d 1126 (1994).

**Standing.**

Because a creditor who sued his debtors' attorneys did not allege that he entered into a contractual relationship with the attorneys, he lacked standing under this section; moreover, he failed to identify specific prohibited actions deemed to be unfair or deceptive, as set forth in §§ 48-603 to 48-603E. *Taylor v. McNichols*, 149 Idaho 826, 243 P.3d 642 (2010).

**Cited in:** *Idaho Power Co. v. Idaho Pub. Utils. Comm'n*, 102 Idaho 744, 639 P.2d 442

(1961); *Wiggins v. Peachtree Settlement Funding*, 273 B.R. 689 (Bankr. D. Idaho Idaho 4/77, III P.3d 162 (Ct. App. 2006)).

#### 48-609. Contract for sale or lease — Evidence of indebtedness — Assignment. [Repealed.]

##### STATUTORY NOTES

**Compiler's Notes.**  
This section, which comprised S.L. 1971, ch. 181, § 10, p. 847, was repealed by S.L. 1980, ch. 112, § 1.

**48-610. Voluntary compliance — District court approval. — (1)** In the administration of this chapter, the attorney general may accept the 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 in 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 that 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 [consumer protection fund] 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 of payment to consumers of actual damages or for restitution of money, property, or other things received from consumers in connection with 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.

**History.**  
1971, ch. 181, § 11, p. 847; am. 1973, ch. 285, § 9, p. 601; am. 1990, ch. 273, § 7, p. 766.

##### STATUTORY NOTES

**Cross References.**  
Attorney general, § 67-1401 et seq.  
Contempt proceedings, § 7-601 et seq.

##### Compiler's Notes.

The bracketed insertion in the second sen-

##### JUDICIAL DECISIONS

##### Arbitration.

Supreme court of Idaho had jurisdiction to hear an appeal from an order dismissing a writ alleging violations of this chapter on the grounds that the parties had entered into a contract that included a provision requiring arbitration.

them to arbitrate disputes between them; although the order dismissed the case, it had the effect of compelling arbitration. *Dan Wiebold Ford, Inc. v. Universal Computer Consulting Holding, Inc.*, 142 Idaho 235, 127 P.3d 138 (2006).

**48-611. Investigative demand by attorney general — Report required. — (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.

**History.**  
1971, ch. 181, § 12, p. 847; am. 1993, ch. 102, § 4, p. 256.

##### STATUTORY NOTES

##### Cross References.

Attorney general, § 67-1401 et seq.

##### Compiler's Notes.

The term "this act" near the beginning of

subsection (1) refers to S.L. 1971, ch. 181, which is compiled as §§ 48-601 to 48-603, 48-604 to 48-608 and 48-610 to 48-619.

## JUDICIAL DECISIONS

## ANALYSIS

Extent of attorney general's power.  
Signature of deputy acceptable.  
Waiver of right to object.

**Extent of Attorney General's Power.**  
An investigative demand does not constitute an unqualified power of the attorney general to require the presentation of the information sought. *Western Acceptance Corp. v. Jones*, 117 Idaho 399, 788 P.2d 214 (1990).

**Signature of Deputy Acceptable.**  
The attorney general is not required personally to sign an investigative demand issued by his office pursuant to this section, as

it may be signed by a deputy attorney general. *Western Acceptance Corp. v. Jones*, 117 Idaho 399, 788 P.2d 214 (1990).

**Waiver of Right to Object.**

Failure to respond or file a petition pursuant to the procedures and within the time period set forth in this section constitutes a waiver of the right to object to the investigative demand. *State ex rel. Lance v. Hobby Horse Ranch Tractor & Equip. Co.*, 129 Idaho 565, 929 P.2d 741 (1996).

**48-612. Additional powers of attorney general.** — 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 3, title 9, Idaho Code.

**History.**  
1971, ch. 181, § 13, p. 847; am. 1990, ch. 213, § 67, p. 535; am. 1990, ch. 273, § 83, p. 766; am. 1991, ch. 243, § 2.

## STATUTORY NOTES

**Cross References.**

Attorney general, § 67-1401 et seq.

**Compiler's Notes.**

This section was also amended by S.L. 1990, ch. 213, § 67 to become effective July 1, 1993. However, § 3 of S.L. 1991, ch. 243 repealed § 67, S.L. 1990, ch. 213, effective July 1, 1993.

**Effective Dates.**

Section 111 of S.L. 1990, ch. 213 amended by § 16 of S.L. 1991, ch. 329 provided that §§ 3 through 45 and 48 through 110 of the act should take effect July 1, 1993 and that §§ 1, 2, 46 and 47 should take effect July 1, 1990.

**48-613. Service of notice.** — 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 to the 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 complainant which institutes a civil proceeding had been filed.

## STATUTORY NOTES

is compiled as §§ 48-601 to 48-603, 48-604 to 48-608 and 48-610 to 48-613.

**Compiler's Notes.**

The term "this act" in the introductory paragraph refers to S.L. 1971, ch. 181, which

**48-614. Failure to obey attorney general — Application to district court.** — (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, (2) 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 [consumer protection fund] 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.

**History.**

1971, ch. 181, § 15, p. 847; am. 1990, ch. 273, § 9, p. 766; am. 1991, ch. 243, § 4, p. 592; am. 1993, ch. 102, § 5, p. 256.

## STATUTORY NOTES

**Cross References.**

Attorney general, § 67-1401 et seq.  
Contempt proceedings, § 7-601 et seq.

**Compiler's Notes.**

The bracketed insertion in subsection (3) was added by the compiler to correct the title of the referenced fund.

**Effective Dates.**

Section 5 of S.L. 1991, ch. 243 read: "An emergency existing thereto, which emergency is hereby declared to exist, Section 2 of this act shall be in full force and effect on and after its passage and approval. Section 3 of this act shall be in full force and effect on and after July 1, 1993. Sections 1 and 4 of this act

shall be in full force and effect on and after July 1, 1991." Approved April 4, 1991.

JUDICIAL DECISIONS

Failure to Object or Respond.

Because this chapter sets forth a clear procedure and time limit for objecting to an investigative demand, the defendant's failure to object or respond to the investigative demand within the statutory time period was

without a reasonable basis in fact on July 1, 1991. Since the state clearly prevailed on appeal, the state was awarded costs and attorney fees. State ex rel. Lance v. Hobby Hobbies, Inc., 129 Idaho 535, 929 P.2d 741 (1996).

48-615. Violation of injunction — Civil penalty. — 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, in addition to 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 the injunction shall retain jurisdiction, and the cause shall be continued, and the injunction shall remain in effect until the cause is resolved. Any person who, in such cases the attorney general acting in the name of the state may petition for recovery of civil penalties. Said civil penalties shall be recovered by the attorney general and shall be remitted to the consumer protection account [consumer protection fund] 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.

History. 1971, ch. 181, § 16, p. 847; am. 1990, ch. 273, § 10, p. 766; am. 1993, ch. 102, § 6, p. 256.

STATUTORY NOTES

Cross References. Attorney general, § 67-1401 et seq.

Compiler's Notes. The bracketed insertion in the last sentence

48-616. Forfeiture of corporate franchise. — 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.

History. 1971, ch. 181, § 17, p. 847; am. 1993, ch. 102, § 7, p. 256.

STATUTORY NOTES

Cross References. Attorney general, § 67-1401 et seq.

48-617. Local law enforcement officials — Duties. — 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.

History. 1971, ch. 181, § 18, p. 847; am. 1990, ch. 273, § 11, p. 766.

STATUTORY NOTES

Cross References. Attorney general, § 67-1401 et seq.

48-618. Construction of chapter. — 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.

History. 1971, ch. 181, § 18, p. 847.

STATUTORY NOTES

Compiler's Notes. For further information on the federal trade commission, see <http://www.ftc.gov/>.

History. 1971, ch. 181, § 18, p. 847; am. 1993, ch. 102, § 6, p. 256.

48-619. Limitation of action. — No private action may be brought under this act more than two (2) years after the cause of action accrues.

History. 1971, ch. 181, § 20, p. 847; am. 1997, ch. 277, § 1, p. 380.

STATUTORY NOTES

Compiler's Notes. The term "this act" near the middle of this section refers to S.L. 1971, ch. 181, which is compiled as §§ 48-601 to 48-603, 48-604 to 48-608 and 48-610 to 48-619.

Section 21 of S.L. 1971, ch. 181 provided: "The provisions of this act are hereby declared severable and if any provision of this act is held invalid, the validity of the remaining provisions of this act shall not be affected." Section 22 of S.L. 1971, ch. 181 declared an emergency. Approved March 24, 1971. Section 2 of S.L. 1997, ch. 127 declared an emergency. Approved March 15, 1997.

JUDICIAL DECISIONS

To determine whether debtors have a timely Disclosure Statement ICFA claim, the court must first determine when their alleged

cause of action "accrued." In Idaho, a cause of action accrues when one party may sue another. Before an "accrued" claim arises under the ICPA, a person must purchase or lease goods or services, and thereby suffer an ascertainable loss. In addition, the ascertainable loss must be the result of a practice declared unlawful by the ICPA. *Beach v. Bank of America* (In re Beach), 447 B.R. 313 (Bankr. D.Mt. 2011).

**CHAPTER 7**

**SHOPLIFTING**

**SECTION.**

48-701. Liability for removing or concealing merchandise — Retail theft.  
48-702. Liability for acts of minors.

**SECTION.**

48-703. Definitions.  
48-704. Authorized actions of merchant.  
48-705. Notice of right of detention.

**48-701. Liability for removing or concealing merchandise — Retail theft.** — Any person who knowingly removes merchandise from merchant's premises without paying therefor, or knowingly conceals merchandise to avoid paying therefor, or knowingly commits retail theft, shall be civilly liable to the merchant for the retail value of the merchandise, plus damages of not less than one hundred dollars (\$100) nor more than one hundred fifty dollars (\$250), costs of suit and reasonable attorneys' fees.

**History.**

I.C., § 48-701, as added by 1974, ch. 245, § 1, p. 1620; am. 1980, ch. 243, § 1, p. 562.

**STATUTORY NOTES**

**Cross References.**

Detention of shoplifting suspects, defense to civil and criminal liability, § 18-4626.

**RESEARCH REFERENCES**

C.J.S. — 52A C.J.S., Larceny, § 1.  
A.L.R. — Actionability of accusation or imputation of shoplifting, 29 A.L.R.3d 961.  
Changing the price tags by patron in self-service store as criminal offense. 60 A.L.R.3d 1293.

Validity, construction, and effect of statute establishing shoplifting or its equivalent as separate criminal offense. 64 A.L.R.4th 10.

**48-702. Liability for acts of minors.** — The parent having legal custody of a minor who knowingly removes merchandise from a merchant's premises without paying therefor, or knowingly conceals merchandise to avoid paying therefor, or knowingly commits retail theft, shall be civilly liable to the merchant for the retail value of the merchandise, plus damages of not less than one hundred dollars (\$100) nor more than two hundred dollars (\$250), costs of suit and reasonable attorneys' fees. Recovery under this section is not limited by any other provision of law which limits the liability of a parent for the tortious conduct of a minor. The liability of parents and of the minor under this chapter is joint and several. A parent not having legal custody of a minor shall not be liable for the conduct of the minor proscribed by this act.

**History.**

I.C., § 48-702, as added by 1974, ch. 245, § 1, p. 1620; am. 1980, ch. 243, § 2, p. 562; am. 2012, ch. 257, § 12, p. 709.

**STATUTORY NOTES**

**Amendments.**

The 2012 amendment, by ch. 257, deleted the legal guardian or "or guardian" following parent or parents in four places.

**Compiler's Notes.**

The term "this act" at the end of the section refers to S.L. 1974, ch. 245, which is codified as §§ 48-701 to 48-705.

**48-703. Definitions.** — As used in this chapter:

(a) "Merchandise" means any personal property displayed, held or offered for sale by a merchant.

(b) "Merchant" means an owner or operator, and the agent, consignee, employee, lessee, or officer of an owner or operator, of any merchant's premises.

(c) "Premises" means any establishment or part thereof wherein merchandise is displayed, held or offered for sale.

(d) "Minor" means any person less than eighteen (18) years of age.

(e) "Retail theft" means the alteration, transfer, or removal of any label, price tag, marking, indicia of value or any other markings which aid in the determination of value of any merchandise displayed, held, stored, or offered for sale, in a retail mercantile establishment, for the purpose of attempting to purchase such merchandise either personally or in consort with another, at less than the retail value with the intention of depriving the merchant of the value of such merchandise.

**History.**

I.C., § 48-703, as added by 1974, ch. 245, § 1, p. 1620; am. 1980, ch. 243, § 3, p. 562.

**RESEARCH REFERENCES**

C.J.S. — 52A C.J.S., Larceny, § 1.  
A.L.R. — Actionability of accusation or imputation of shoplifting, 29 A.L.R.3d 961.  
Changing the price tags by patron in self-service store as criminal offense. 60 A.L.R.3d 1293.

Validity, construction, and effect of statute establishing shoplifting or its equivalent as separate criminal offense. 64 A.L.R.4th 10.

**48-704. Authorized actions of merchants.** — (a) Any merchant may request a person on his premises to place or keep in full view any merchandise such person may have removed, or which the merchant has reason to believe he may have removed, from its place of display or elsewhere, whether for examination, purchase or for any other purpose. No merchant shall be criminally or civilly liable on account of having made such request.

(b) Any merchant who has reason to believe that merchandise has been taken by a person in violation of this act and that he can recover such merchandise by taking such a person into custody and detaining him may, for the purpose of attempting to effect such recovery or for the purpose of informing a peace officer of the circumstances of such detention, take the person into custody and detain him, in a reasonable manner and for a reasonable length of time.

**History.**

I.C., § 48-704, as added by 1974, ch. 245, § 1, p. 1620.