

TITLE 18
CRIMES AND PUNISHMENTS

CHAPTER 31
FALSE PRETENSES, CHEATS AND MISREPRESENTATIONS

18-3101. PYRAMID PROMOTIONAL SCHEMES PROHIBITED -- PENALTIES -- SALE OF INTEREST VOIDABLE -- SCOPE OF REMEDY. (1) It is illegal and prohibited for any person, or any agent or employee thereof, to establish, promote, offer, operate, advertise or grant participation in any pyramid promotional scheme.

(2) As used in this section:

(a) "Appropriate inventory repurchase program" means a program by which a plan or operation repurchases, upon request at the termination of a participant's business relationship with the plan or operation and based upon commercially reasonable terms, current and marketable inventory purchased and maintained by the participant for resale, use or consumption, provided such plan or operation clearly describes the program in its recruiting literature, sales manual, or contracts with participants, including the manner in which the repurchase is exercised and disclosure of any inventory that is not eligible for repurchase under the program.

(b) "Commercially reasonable terms" means the repurchase of current and marketable inventory within twelve (12) months from the date of original purchase at not less than ninety percent (90%) of the original net cost to the participant, less appropriate set-offs and legal claims, if any. In the case of service products, the repurchase of such service products shall be on a pro rata basis, unless clearly disclosed otherwise to the participant, in order to qualify as "commercially reasonable terms."

(c) "Compensation" means a payment of any money, thing of value, or financial benefit.

(d) "Consideration" means a payment of any money, or the purchase of goods, services, or intangible property but shall not include:

1. The purchase of goods or services furnished at cost to be used in making sales and not for resale.
2. Time and effort spent in pursuit of sales or recruiting activities.

(e) "Current and marketable" includes inventory that, in the case of consumable or durable goods, is unopened, unused and within its commercially reasonable use of shelf-life period. In the case of services and intangible property, including internet sites, "current and marketable" means the unexpired portion of any contract or agreement. The term "current and marketable" does not include inventory that has been clearly described to the participant prior to purchase as a seasonal, discontinued, or special promotion product not subject to the plan or operation's inventory repurchase program.

(f) "Inventory" includes both goods and services, including company-produced promotional materials, sales aids and sales kits that the plan or operation requires independent salespersons to purchase.

(g) "Inventory loading" means that the plan or operation requires or encourages its independent salespersons to purchase inventory in an amount that unreasonably exceeds that which the salesperson can

expect to resell for ultimate consumption, or to use or consume, in a reasonable time period.

(h) "Participant" means a natural person who joins a plan or operation.

(i) "Person" means a natural person, partnership, corporation, trust, estate, business trust, joint venture, unincorporated association, or any other legal or commercial entity.

(j) "Promote" means to contrive, prepare, establish, plan, operate, advertise or otherwise induce or attempt to induce another person to be a participant.

(k) "Pyramid promotional scheme" means any plan or operation in which a participant gives consideration for the right to receive compensation that is derived primarily from the recruitment of other persons as participants in the plan or operation rather than from the sales of goods, services or intangible property to participants or by participants to others.

(3) A limitation as to the number of persons who may participate, or the presence of additional conditions affecting eligibility, or upon payment of anything of value by a person whereby the person obtains any other property in addition to the right to receive consideration, does not change the identity of the scheme as a pyramid promotional scheme.

(4) Any person, or any agent or employee thereof who willfully and knowingly promotes, offers, advertises, or grants participation in a pyramid promotional scheme shall be guilty of a felony.

(5) All pyramid promotional schemes offered by the same person, or agents or employees thereof, or any person controlled by or affiliated with such person, for the same type of consideration, at substantially the same period of time and for the same general purpose, shall be deemed to be one (1) integrated pyramid promotional scheme, even though such pyramid promotional schemes may be given different names or other designations.

(6) Nothing in this section or in any rule promulgated pursuant to this section shall be construed to prohibit a plan or operation, or to define such plan or operation as a pyramid promotional scheme, based upon the fact that participants in the plan or operation give consideration in return for the right to receive compensation based upon purchases of goods, services or intangible property by participants for personal use, consumption or resale, provided the plan or operation implements an appropriate inventory repurchase program and does not promote inventory loading.

(7) Any violation of this section shall also be deemed an unfair and deceptive practice in violation of the Idaho consumer protection act. Any person aggrieved by a violation of this section can recover monetary damages pursuant to the Idaho consumer protection act.

(8) The rights and remedies that are granted under the provisions of this section to purchasers in pyramid promotional schemes are independent of and in addition to any other right or remedy available to them in law or equity, and nothing contained herein shall be construed to diminish or abrogate any such right or remedy.

[18-3101, added 1983, ch. 241, sec. 1, p. 649; am. 2004, ch. 51, sec. 1, p. 240.]

18-3105. FALSE STATEMENT BY COMMISSION MERCHANT, BROKER, AGENT, FACTOR OR CONSIGNEE TO PRINCIPAL OR CONSIGNOR. Every commission merchant, broker, agent, factor or consignee who shall wilfully and corruptly make, or cause to be made, to the principal or consignor of such commission merchant,

agent, broker, factor or consignee, a false statement concerning the price obtained for, or the quality or quantity of any property consigned or entrusted to, such commission merchant, agent, broker, factor or consignee, for sale, shall be deemed guilty of a misdemeanor, and on conviction thereof shall be punished by fine not exceeding \$300.00, or by imprisonment in the county jail not exceeding six (6) months, or by both such fine and imprisonment.

[I.C., sec. 18-3105, as added by 1972, ch. 336, sec. 1, p. 844.]

18-3106. DRAWING CHECK WITHOUT FUNDS -- DRAWING CHECK WITH INSUFFICIENT FUNDS -- PRIMA FACIE EVIDENCE OF INTENT -- STANDING OF PERSON HAVING ACQUIRED RIGHTS -- PROBATION CONDITIONS. (a) Any person who for himself or as the agent or representative of another or as an officer of a corporation, willfully, with intent to defraud shall make or draw or utter or deliver, or cause to be made, drawn, uttered or delivered, any check, draft or order for the payment of money upon any bank or depository, or person, or firm, or corporation, knowing at the time of such making, drawing, uttering or delivery that the maker or drawer has no funds in or credit with such bank or depository, or person, or firm, or corporation, for the payment in full of such check, draft or order upon its presentation, although no express representation is made with reference thereto, shall upon conviction be punished by imprisonment in the state prison for a term not to exceed three (3) years or by a fine not to exceed fifty thousand dollars (\$50,000) or by both such fine and imprisonment.

(b) Any person who for himself or as the agent or representative of another or as an officer of a corporation, willfully, with intent to defraud shall make, draw, utter or deliver, or cause to be made, drawn, uttered or delivered, any check, draft or order for the payment of money in the sum of two hundred fifty dollars (\$250) or more, or any series of transactions as defined in subsection (f) of this section, upon any bank or depository, or person, or firm, or corporation, knowing at the time of such making, drawing, uttering or delivery that the maker or drawer has some but not sufficient funds in or credit with such bank or depository, or person, or firm, or corporation, for the full payment of such check, draft or order or series of transactions upon presentation, although no express representation is made with reference thereto, shall upon conviction be punished by imprisonment in the state prison for a term not to exceed three (3) years, or by a fine not to exceed fifty thousand dollars (\$50,000), or by both such fine and imprisonment.

(c) Any person who for himself or as the agent or representative of another or as an officer of a corporation, willfully, with intent to defraud, shall make, draw, utter or deliver, or cause to be made, drawn, uttered, or delivered, any check, draft or order for payment of money, in a sum less than two hundred fifty dollars (\$250), which is not part of a series of transactions as defined in subsection (f) of this section, upon any bank or depository, or person, or firm, or corporation, knowing at the time of such making, drawing, uttering or delivery that the maker or drawer has some but not sufficient funds in or credit with such bank or depository, or firm, or person, or corporation, for the full payment of such check, draft or order upon its presentation, although no express representation is made with reference thereto, shall upon conviction for a first offense be punished by imprisonment in the county jail for a term not exceeding six (6) months, or by a fine not exceeding one thousand dollars (\$1,000) or by both such fine and im-

prisonment; and upon a second conviction the person so convicted shall be punished by imprisonment in the county jail for a term not exceeding one (1) year, or by a fine not exceeding two thousand dollars (\$2,000), or by both such fine and imprisonment; provided, however, that upon a third or subsequent conviction, the person so convicted shall be punished by imprisonment in the state prison for a term not exceeding three (3) years, or by a fine not exceeding fifty thousand dollars (\$50,000), or by both such fine and imprisonment.

(d) As against the maker or drawer thereof, the making, drawing, uttering or delivering of such check, draft or order as aforesaid shall be prima facie evidence of intent to defraud and of knowledge of no funds or insufficient funds, as the case may be, in or credit with such bank, or depository, or person, or firm, or corporation, for the payment in full of such check, draft or order upon its presentation. This prima facie intent to defraud and knowledge of no funds or insufficient funds, as the case may be, shall not be negated by evidence that the check draft or order was for payment of a preexisting debt, including open accounts. The word "credit" as used herein shall be construed to mean an arrangement or understanding with the bank or depository, or person, or firm, or corporation upon whom such check, draft or order is drawn for the payment of such check, draft or order.

(e) Any person having acquired rights with respect to a check which is not paid because the drawer has no funds, no account or insufficient funds, shall have standing to file a complaint under this section, regardless of whether he is the payee, holder or bearer of the check.

(f) For purposes of this section a "series of transactions" means a series of checks, drafts or orders for the payment of money which are less than two hundred fifty dollars (\$250.00) individually but in the aggregate total two hundred fifty dollars (\$250) or more, and which are made, uttered, drawn or delivered in violation of this section as part of a common scheme or plan.

(g) If a sentence of probation is ordered for violation of this section, the court as a condition of probation may require the defendant to make restitution on all checks issued and which are unpaid at the date of commencement of the probation in addition to any other terms and conditions appropriate for the treatment and rehabilitation of the defendant.

[I.C., sec. 18-3106, as added by 1972, ch. 336, sec. 1, p. 884; am. 1979, ch. 214, sec. 1, p. 597; am. 1994, ch. 184, sec. 1, p. 602; am. 1996, ch. 306, sec. 1, p. 1004; am. 1998, ch. 324, sec. 1, p. 1048.]

18-3122. DEFINITIONS. The following words and phrases used in this chapter mean:

(1) "Authorized credit card merchant" means a person or organization who is authorized by an issuer to furnish money, goods, services or anything of value upon presentation of a financial transaction card or a financial transaction card account number by a card holder, and to present valid credit card sales drafts to the issuer for payment.

(2) "Automated banking device" means any machine which, when properly activated by a financial transaction card and/or a personal identification code, may be used for any of the purposes for which a financial transaction card may be used.

(3) "Card holder" means any person or organization named on the face of a financial transaction card to whom, or for whose benefit, a financial transaction card is issued by an issuer.

(4) "Credit card sales draft" means:

(a) Any sales slip, draft, voucher or other written or electronic record of a sale of goods, services or anything else of value made or purported to be made to or at the request of a card holder with a financial transaction card, financial transaction card account number or personal identification code; or

(b) Any evidence, however manifested, of any right or purported right to collect from a card holder funds due or purported to be due with respect to any sale or purported sale.

(5) "Expired financial transaction card" means any financial transaction card which is no longer valid because the terms agreed to have been cancelled or have elapsed.

(6) "Financial transaction card" or "FTC" means any instrument or device known as a credit card, credit plate, bank services card, banking card, check guarantee card, debit card, telephone credit card or by any other name issued by the issuer for the use of the card holder in obtaining money, goods, services, or anything else of value on credit, or in certifying or guaranteeing to a person or business the availability to the card holder of the funds on deposit that are equal to or greater than the amount necessary to honor a draft or check payable to the order of such a person or business; or any instrument or device used in providing the card holder access to a demand deposit account or a time deposit account for the purpose of making deposits of money or checks therein, or withdrawing funds in the form of money, money orders, or traveler's checks or other representative of value therefrom or transferring funds from any demand account or time deposit account to any credit card account in full or partial satisfaction of any outstanding balance existing therein.

(7) "Financial transaction card account number" means the account number assigned by an issuer to a financial transaction card to identify and account for transactions involving that financial transaction card.

(8) "Issuer" means a business organization or financial institution or its duly authorized agent which issues a financial transaction card.

(9) "Personal identification code" means any numerical and/or alphabetical code assigned to the card holder of a financial transaction card by the issuer to permit the authorized electronic use of that FTC.

(10) "Personal identifying information" means the name, address, telephone number, driver's license number, social security number, place of employment, employee identification number, mother's maiden name, checking account number, savings account number, financial transaction card number, or personal identification code of an individual person, or any other numbers or information which can be used to access a person's financial resources.

(11) "Revoked financial transaction card" means an FTC which is no longer valid because permission to use it has been suspended or terminated by the issuer with actual notice having been made upon the card holder.

[18-3122, added 1981, ch. 164, sec. 1, p. 288; am. 1991, ch. 331, sec. 1, p. 856; am. 1999, ch. 124, sec. 1, p. 361; am. 2007, ch. 33, sec. 1, p. 74.]

18-3123. FORGERY OF A FINANCIAL TRANSACTION CARD. Any person who, with intent to defraud, counterfeits, falsely makes, embosses, or encodes magnetically or electronically any FTC, or who with intent to defraud, uses the financial transaction card account number or personal identification code of a card holder in the creation of a fictitious or counterfeit credit card

sales draft, signs the name of another, or a fictitious name to an FTC, sales slip, sales draft, credit card sales draft, or any instrument for the payment of money which evidences an FTC transaction, shall be guilty of forgery and shall be punished under the current forgery statutes of the state of Idaho.

[18-3123, added 1981, ch. 164, sec. 2, p. 289; am. 1991, ch. 331, sec. 2, p. 857.]

18-3124. FRAUDULENT USE OF A FINANCIAL TRANSACTION CARD OR NUMBER. It is a violation of the provisions of this section for any person with the intent to defraud:

(1) To use an FTC or FTC number to knowingly and willfully exceed the actual balance of the demand deposit account or time deposit account;

(2) To use an FTC or FTC number to willfully exceed an authorized credit line in the amount of one thousand dollars (\$1,000) or more, or fifty percent (50%) of such authorized credit line, whichever is greater;

(3) To willfully deposit into his account or any other account by means of an automatic banking device, any false, forged, fictitious, altered or counterfeit check draft, money order, or any other such document;

(4) To knowingly sell or attempt to sell credit card sales drafts to an authorized credit card merchant or any other person or organization, for any consideration whether at a discount or otherwise, or present or cause to be presented to the issuer or an authorized credit card merchant, for payment or collection, any credit card sales draft, or purchase or attempt to purchase any credit card sales draft for presentation to the issuer or an authorized credit card merchant for payment or collection if:

(a) Such draft is counterfeit or fictitious;

(b) The purported sale evidenced by such credit card sales draft did not take place;

(c) The purported sale was not authorized by the card holder;

(d) The items or services purported to be sold as evidenced by such credit card sales draft are not delivered or rendered to the card holder or person intended to receive them; or

(e) If purportedly delivered or rendered, such goods or services are of materially lesser value or quality from that intended by the purchaser, or are materially different from goods or services represented by the seller or his agent to the purchaser, or have substantial discrepancies from goods or services impliedly represented by the purchase price when compared with the actual goods or services purportedly delivered or rendered.

(5) To knowingly keep or maintain in any manner carbon or other impressions or copies of credit card sales drafts, and to use such impressions or copies for the purpose of creating any fictitious or counterfeit credit sales draft, or to engage in any other activity prohibited in this section.

[18-3124, added 1981, ch. 164, sec. 3, p. 289; am. 1991, ch. 331, sec. 3, p. 857; am. 1999, ch. 124, sec. 2, p. 363; am. 2002, ch. 72, sec. 1, p. 158; am. 2007, ch. 33, sec. 2, p. 76.]

18-3125. CRIMINAL POSSESSION OF FINANCIAL TRANSACTION CARD, FINANCIAL TRANSACTION NUMBER AND FTC FORGERY DEVICES. It is a felony punishable as provided in subsection (3) of section [18-3128](#), Idaho Code, for any person:

(1) To acquire an FTC or FTC number from another without the consent of the card holder or the issuer with the intent to use to defraud, or to, with

the knowledge that it has been so acquired, receive an FTC or FTC number with the intent to use to defraud, or to sell, or to transfer the FTC or FTC number to another person with the knowledge that it is to be used to defraud;

(2) To acquire an FTC or FTC number that he knows to have been lost, mislaid, or delivered under a mistake as to the identity or address of the card holder, and to retain possession with the intent to use to defraud or to sell or transfer to another person with the knowledge that it is to be used to defraud;

(3) To, with the intent to defraud, knowingly possess a false, fictitious, counterfeit, revoked, expired or fraudulently obtained FTC or any FTC account number;

(4) To, with the intent to defraud, knowingly obtain or attempt to obtain credit or purchase or attempt to purchase any goods, property or service, by use of any false, fictitious, counterfeit, revoked, expired or fraudulently obtained FTC or FTC account number;

(5) To, with the intent to defraud, knowingly produce to another person or procure, a false, fictitious, counterfeit, revoked, expired or fraudulently obtained FTC or any FTC account number;

(6) To, with the intent to defraud and while making an application for an FTC to an issuer, knowingly make or cause to be made, a false written or oral statement or representation respecting his name, personal identifying information, occupation, financial condition, assets, or to materially undervalue any indebtedness for the purpose of influencing the issuer to issue an FTC.

[18-3125, added 1981, ch. 164, sec. 4, p. 290; am. 2002, ch. 72, sec. 2, p. 159; am. 2007, ch. 33, sec. 3, p. 77; am. 2015, ch. 62, sec. 1, p. 171.]

18-3125A. UNAUTHORIZED FACTORING OF CREDIT CARD SALES DRAFTS. It is unlawful for any person to knowingly and with intent to defraud, employ, solicit or otherwise cause an authorized credit card merchant, or for the authorized credit card merchant itself, to present to the issuer for payment any credit card sales draft pertaining to any sale or purported sale of goods or services which was not made by such authorized credit card merchant in the ordinary course of business, except with the express authorization of the issuer.

[18-3125A, added 1991, ch. 331, sec. 4, p. 858.]

18-3126. MISAPPROPRIATION OF PERSONAL IDENTIFYING INFORMATION. It is unlawful for any person to obtain or record personal identifying information of another person without the authorization of that person, with the intent that the information be used to obtain, or attempt to obtain, credit, money, goods or services without the consent of that person.

[18-3126, added 1999, ch. 124, sec. 3, p. 364; am. 2008, ch. 78, sec. 1, p. 205.]

18-3126A. ACQUISITION OF PERSONAL IDENTIFYING INFORMATION BY FALSE AUTHORITY. It is unlawful for any person to falsely assume or pretend to be a member of the armed forces of the United States or an officer or employee acting under authority of the United States or any department, agency or office thereof or of the state of Idaho or any department, agency or office thereof,

and in such pretended character, seek, demand, obtain or attempt to obtain personal identifying information of another person.

[18-3126A, added 2005, ch. 219, sec. 1, p. 695.]

18-3127. RECEIVING OR POSSESSING FRAUDULENTLY OBTAINED GOODS OR SERVICES. It is unlawful for any person to receive, retain, conceal, possess or dispose of personal property, cash or other representative of value, who knows or has reason to believe the property, cash or other representative of value has been obtained by fraud as set forth in sections [18-3123](#), [18-3124](#), [18-3125A](#) and [18-3126](#), Idaho Code.

[(18-3127) 18-3126, added 1981, ch. 164, sec. 5, p. 290; am. 1991, ch. 331, sec. 5, p. 859; am. and redesign. 1999, ch. 124, sec. 4, p. 364.]

18-3128. PENALTY FOR VIOLATION. (1) Any person found guilty of a violation of section [18-3124](#), [18-3125A](#) or [18-3127](#), Idaho Code, is guilty of a misdemeanor. In the event that the retail value of the goods obtained or attempted to be obtained through any violation of the provisions of section [18-3124](#), [18-3125A](#) or [18-3127](#), Idaho Code, exceeds three hundred dollars (\$300), any such violation will constitute a felony, and will be punished as provided in this section. Any person found guilty of a violation of section [18-3125](#), [18-3126](#) or [18-3126A](#), Idaho Code, is guilty of a felony.

(2) For purposes of this section, the punishment for a misdemeanor shall be a fine of up to one thousand dollars (\$1,000) or up to one (1) year in the county jail, or both such fine and imprisonment.

(3) For purposes of this section, the punishment for a felony shall be a fine of up to fifty thousand dollars (\$50,000) or imprisonment in the state prison not exceeding five (5) years, or both such fine and imprisonment.

[(18-3128) 18-3127, added 1981, ch. 164, sec. 6, p. 290; am. 1982, ch. 100, sec. 1, p. 279; am. 1991, ch. 331, sec. 6, p. 859; am. 1994, ch. 132, sec. 3, p. 304; am. and redesign. 1999, ch. 124, sec. 5, p. 364; am. 2002, ch. 72, sec. 3, p. 160; am. 2005, ch. 219, sec. 2, p. 695; am. 2007, ch. 33, sec. 4, p. 77.]