

TITLE 48
MONOPOLIES AND TRADE PRACTICES

CHAPTER 16
HEALTH-RELATED CASH DISCOUNT CARDS

48-1601. UNLAWFUL PRACTICES -- EXCEPTIONS. It shall be unlawful and a violation of this chapter for any person to sell, market, promote, advertise or otherwise distribute any card or other purchasing mechanism or device, which is not insurance, that purports to offer discounts or access to discounts from health care providers in health-related purchases where:

(1) Such card or other purchasing mechanism or device does not expressly provide in bold and prominent type that the discounts are not insurance;

(2) Such discounts are not specifically authorized by an individual and separate contract with each health care provider listed in conjunction with the card or other purchasing mechanism or device; or

(3) The discounts or access to discounts offered or the range of discounts or access to the range of discounts offered are misleading, deceptive or fraudulent, regardless of the literal wording used.

(4) Nothing in this chapter shall be construed to apply to:

(a) A customer discount or membership card issued by a store or buying club for use at that store or buying club;

(b) A benefit administered by an insurer, a carrier or a managed care organization as defined in sections [41-103](#), [41-2212](#) and [41-3903](#), Idaho Code, respectively.

[48-1601, added 2000, ch. 185, sec. 1, p. 455.]

48-1602. COURT ACTIONS UPON VIOLATION. (1) The attorney general of the state of Idaho, any person, firm, private corporation, municipal or other public corporation, or trade association, may maintain an action to enjoin a continuance of any act or acts in violation of this chapter and for the recovery of damages.

(2) Any person subject to liability under this section shall be deemed, as a matter of law, to have purposefully availed himself of the privileges of conducting activities within Idaho, sufficient to subject the person to the personal jurisdiction of the district court hearing an action brought pursuant to this chapter.

(3) An action for violation of this section may be brought:

(a) In the county where the plaintiff resides;

(b) In the county where the plaintiff conducts business; or

(c) In the county where the card or other purchasing mechanism or device was sold, marketed, promoted, advertised or otherwise distributed.

(4) If, in such action, the court shall find that the defendant is violating or has violated any of the provisions of this chapter, it shall enjoin the defendant from a continuance thereof. It shall not be necessary, except to recover for actual damages under subsection (5) of this section, that actual damages to the plaintiff be alleged or proved.

(5) In addition to injunctive relief, the plaintiff in the action shall be entitled to recover from the defendant:

(a) One hundred dollars (\$100) per card or other purchasing mechanism or device sold, marketed, promoted, advertised or otherwise dis-

tributed within the state of Idaho, or ten thousand dollars (\$10,000), whichever is greater;

- (b) Three (3) times the amount of the actual damages, if any sustained;
- (c) Reasonable attorney's fees;
- (d) Costs; and
- (e) Any other relief which the court deems proper.

(6) All actions under this section shall be commenced within two (2) years after the date on which the violation of this chapter occurred or within two (2) years after the person bringing the action discovered, or in the exercise of reasonable diligence, should have discovered, the occurrence of the violation of this chapter. The period of limitation provided in this section may be extended for a period of one hundred eighty (180) days if the person bringing the action proves by a preponderance of the evidence that the failure to timely commence the action was caused by the defendant's engaging in conduct solely calculated to induce the plaintiff to refrain from or postpone commencement of the action.

(7) Any defendant in an action brought under the provisions of this chapter may be required to testify as provided by law. In addition, the books and records of any such defendant may be brought into court and introduced, by reference, into evidence.

(8) The remedies prescribed in this section are cumulative and in addition to any other remedies prescribed by law, and in addition to any other applicable criminal, civil or administrative penalties.

[48-1602, added 2000, ch. 185, sec. 1, p. 455.]

48-1603. DESIGNATION OF AGENT. Any person who sells, markets, promotes, advertises or otherwise distributes any card or other purchasing mechanism or device, which is not insurance, that purports to offer discounts from health care providers in health-related purchases in Idaho, shall designate an agent who is a resident of Idaho, for service of process and register such agent with the secretary of state.

[48-1603, added 2000, ch. 185, sec. 1, p. 456.]