

History.

I.C., § 47-1805, as added by 2002, ch. 153, § 1, p. 448.

STATUTORY NOTES

Cross References.

Department of lands, § 58-101 et seq.
State board of land commissioners, Idaho Const., Art IX, § 7, and § 58-101 et seq.

Effective Dates.

Section 2 of S.L. 2002, ch. 153 declared emergency. Approved March 20, 2002.

TITLE 48

MONOPOLIES AND TRADE PRACTICES

CHAPTER.

- 1. IDAHO COMPETITION ACT, §§ 48-101 — 48-119.
- 2. ANTI-PRICE DISCRIMINATION ACT, §§ 48-201 — 48-206.
- 3. FAIR TRADE ACT. [REPEALED.]
- 4. UNFAIR SALES ACT, §§ 48-401 — 48-413.
- 5. REGISTRATION AND PROTECTION OF TRADEMARKS, §§ 48-501 — 48-518.
- 6. CONSUMER PROTECTION ACT, §§ 48-601 — 48-619.
- 7. SHOPLIFTING, §§ 48-701 — 48-705.
- 8. IDAHO TRADE SECRETS ACT, §§ 48-801 — 48-807.
- 9. NEW MOTOR VEHICLE WARRANTIES — MANUFACTURER'S DUTY TO REPAIR, REFUND OR REPLACE, §§ 48-901 — 48-913.

CHAPTER.

- 10. IDAHO TELEPHONE SOLICITATION ACT, §§ 48-1001 — 48-1010.
- 11. IDAHO PAY-PER-TELEPHONE CALL ACT, §§ 48-1101 — 48-1108.
- 12. IDAHO CHARITABLE SOLICITATION ACT, §§ 48-1201 — 48-1206.
- 13. MUSIC LICENSING AND COPYRIGHT ENFORCEMENT ACT, §§ 48-1301 — 48-1308.
- 14. ASSISTIVE TECHNOLOGY WARRANTY ACT, §§ 48-1401 — 48-1407.
- 15. IDAHO NONPROFIT HOSPITAL SALE OR CONVERSION ACT, §§ 48-1501 — 48-1512.
- 16. HEALTH-RELATED CASH DISCOUNT CARDS, §§ 48-1601 — 48-1603.
- 17. BAD FAITH ASSERTIONS OF PATENT INFRINGEMENT, §§ 48-1701 — 48-1708.

CHAPTER 1

IDAHO COMPETITION ACT

SECTION.

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- 48-102. Legislative findings, purpose, interpretation and scope of chapter.
- 48-103. Definitions.
- 48-104. Unreasonable restraint of trade or commerce.
- 48-105. Monopolies.
- 48-106. Acquisitions that substantially lessen competition.
- 48-107. Exempt activities.
- 48-108. Civil actions and settlements by the attorney general.
- 48-109. Civil investigations.
- 48-110. Failure to obey civil investigative demand or subpoena.

SECTION.

- 48-111. Violation of court orders and consent decrees — Penalties.
- 48-112. Additional relief of district court authorized.
- 48-113. Private causes of action.
- 48-114. Awards to the attorney general — Use of moneys.
- 48-115. Statute of limitations.
- 48-116. Action not barred because it affects interstate or foreign commerce.
- 48-117. Service of notice.
- 48-118. Venue.
- 48-119. Purpose of extension to distributors of publications. [Repealed.]

48-101. Short title. — This act shall be known and may be cited as the Idaho Competition Act."

History.

I.C., § 48-101, as added by 2000, ch. 148, § 1, p. 377.

STATUTORY NOTES

Prior Laws.

Former § 48-101, which comprised 1911, C.S. 215, § 1, p. 688; reen. C.L. 107:1; C.S., 1923:1; I.C.A., § 47-101, was repealed by S.L. 2000, ch. 148, § 1, effective July 1, 2000.

Compiler's Notes.

The term "this act" refers to S.L. 2000, ch. 148, which is compiled as §§ 18-7803 and 48-101 to 48-118.

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JUDICIAL DECISIONS

Retroactivity.

Retroactive application of a statute is not allowed unless there is clear legislative intent to that effect; the language of the Idaho Competition Act indicates that it does not apply

retroactively to permit the recovery of damages based upon conduct that occurred before its effective date. *State v. Daicel Chem. Indus., Ltd.*, 141 Idaho 102, 106 P.3d 428 (2005).

DECISIONS UNDER PRIOR LAW

ANALYSIS

Application.
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Application.

This section addresses only conspiracies or other combinations in restraint of trade. *Pope v. Intermountain Gas Co.*, 103 Idaho 217, 646 P.2d 988 (1982).

Because this section specifically addresses the subject of attorney fees in cases brought under the antitrust law, it was more specific than § 12-120(3), and was controlling in an action arising from a reimbursement agreement regarding sale of prescription drugs to health insurer's subscribers. *K. Hefner, Inc. v. Caremark, Inc.*, 128 Idaho 726, 918 P.2d 595 (1996).

Attorney Fees.

The peculiar nature of a legal malpractice action requires the action to proceed as a suit within a suit; therefore, an award of attorney fees pursuant to the underlying antitrust action constitutes a part of the measure of damages in the malpractice case and must be submitted as part of the proof of damages under the antitrust claim; it is not sufficient to file a post-trial affidavit of costs and fees

under Idaho R. Civ. P. 54(d). *Fitzgerald v. Walker*, 121 Idaho 589, 826 P.2d 1301 (1992).

Concerted Action.

Concerted action is not necessary to have a violation of this section. *Twin Falls Farm & City Dist., Inc. v. D & B Supply Co., Inc.*, 96 Idaho 351, 528 P.2d 1286 (1974).

Conspiracy.

Employer and his employees were held not guilty of conspiracy to drive competitor out of business, since acts of employees were, in effect, acts of employer. *Udelavitz v. Idaho Junk House*, 46 Idaho 441, 268 P. 15 (1928).

An internal division of a corporation is incapable of conspiring with that corporation, since they are one and the same, and the plurality of actors required for conspiracy is absent. *Pope v. Intermountain Gas Co.*, 103 Idaho 217, 646 P.2d 988 (1982).

Since a conspiracy requires the agreement of at least two individuals, a finding of conspiracy against one defendant cannot be upheld where the other alleged conspirators are

tried and absolved of participation in the same proceeding. *Pope v. Intermountain Gas Co.*, 103 Idaho 217, 646 P.2d 988 (1982).

Power supplier's antitrust claims failed because a conspiracy among power company, its officers, directors, and agents did not provide the predicate for a successful antitrust claim under the statutes of Idaho. *Afton Energy, Inc. v. Idaho Power Co.*, 122 Idaho 333, 834 P.2d 850 (1992).

The federal courts have placed a "gloss" on the contract element of the federal statute requiring also that there be a "unity of purpose" between the contracting parties to violate the antitrust laws. This element is also a requirement of this section. *K. Hefner, Inc. v. Caremark, Inc.*, 128 Idaho 726, 918 P.2d 595 (1996).

Construction of Federal Antitrust Act.

A federal district court was not required, in determining whether the Idaho statute applied to municipal corporations, to follow construction given to the federal antitrust act by the United States supreme court, on the ground that the state legislature, in enacting the statute, intended to adopt the construction previously given the federal act by the United States supreme court. *Wilcox v. City of Idaho Falls*, 23 F. Supp. 626 (D. Idaho 1938).

Contract Illegal under Federal Law.

Contract concerning exhibition of motion picture films, which was illegal under Sherman Antitrust Act, 15 U.S.C.S. § 1 et seq., could not be enforced in action for damages. *Fox Film Corp. v. Tri-State Theatres*, 51 Idaho 439, 6 P.2d 135 (1931).

Deceptive Use of Names.

Where a complaint alleged that the use of the name "United American Benefit Association, Inc." by the defendant was deceptively similar to the name "American Home Benefit Association, Inc." used by the plaintiff, and alleged that the general public was misled and deceived, and that much embarrassment and inconvenience had been suffered by the plaintiff as a result of the similarity of the names, the complaint was not demurrable on the ground that the plaintiff could not claim exclusive right to the use of the word "American" for the reason that it was broadly geographical. *American Home Benefit Ass'n v. United Am. Benefit Ass'n*, 63 Idaho 754, 125 P.2d 1010 (1942).

The specific intent and dangerous probability requirements of attempted monopolization are fulfilled when it is shown that (1) an entity possesses monopoly power, (2) that monopoly power has been employed so that an actual restraint on trade has been accomplished, and (3) the restraint has been obtained in an additional market within the distribution chain of the relevant product.

Pope v. Intermountain Gas Co., 103 Idaho 217, 646 P.2d 988 (1982).

Elements.

The basic elements necessary to prove charge of attempted monopoly under this section are: (1) a specific intent by the defendant to monopolize, and (2) overt acts by the defendant which create a dangerous probability that the intended monopoly will be accomplished. *Pope v. Intermountain Gas Co.*, 103 Idaho 217, 646 P.2d 988 (1982).

The specific intent and dangerous probability requirements of attempted monopoly are fulfilled when it is shown that the entity possesses monopoly power, (1) monopoly power has been employed to obtain an actual restraint on trade has been obtained in an additional market within the distribution chain of the relevant product. *Pope v. Intermountain Gas Co.*, 103 Idaho 217, 646 P.2d 988 (1982).

There are three essential elements in a private antitrust action: (1) a violation of antitrust law, (2) direct injury to the plaintiff from such violations, and (3) damages sustained by the plaintiff. Therefore, a finding of a violation by itself does not result in a finding of damages. *Pope v. Intermountain Gas Co.*, 103 Idaho 217, 646 P.2d 988 (1982).

Injury arising out of a defendant's violation is an element of proof in an action for civil liability under this section, since to a person's business is essential to the success of the business. *Pope v. Intermountain Gas Co.*, 103 Idaho 217, 646 P.2d 988 (1982).

—Control of Market.

There is no set degree of percent market power which must be possessed by a defendant to be dangerous to achieving a monopoly. Rather, in determining whether there is a dangerous probability that a monopoly will be achieved, the extent of market power must be evaluated in conjunction with prevailing market conditions, as well as the business performance of the defendant. *Pope v. Intermountain Gas Co.*, 103 Idaho 217, 646 P.2d 988 (1982).

Where even liberally construing the defendant could have had not more than 10 percent of the insulation market, and of the highly competitive nature of the market, the claim of attempted monopoly was not sustained. *Pope v. Intermountain Gas Co.*, 103 Idaho 217, 646 P.2d 988 (1982).

—Intent.

Generally, since there is rarely any direct evidence of specific intent to monopolize, the existence of specific intent to monopolize may be inferred from anticompetitive conduct of the defendant.

Pope v. Intermountain Gas Co., 103 Idaho 217, 646 P.2d 988 (1982).

A finding that a defendant has engaged in a particular predatory or illegal act, such as selling below cost, is not the equivalent of finding specific intent, but is merely a basis from which such intent may be inferred; and isolated or occasional instances of selling below cost, while predatory or illegal in nature, do not necessarily indicate a specific intent to monopolize. Pope v. Intermountain Gas Co., 103 Idaho 217, 646 P.2d 988 (1982).

The existence of specific intent to monopolize must be determined by weighing all of the circumstances in the particular case, including the nature of the conduct, its consistency and duration, the conditions of the market, and characteristics of the defendant. Pope v. Intermountain Gas Co., 103 Idaho 217, 646 P.2d 988 (1982).

Exclusive Agency Contracts.

Contract creating an exclusive agency for the sale on commission of a given commodity in a specific territory and binding the agent not to sell the goods of any other manufacturer was not in violation of antitrust law. Independent Gas & Oil Co. v. T.B. Smith Co., 51 Idaho 710, 10 P.2d 317 (1932).

Fair Market Value.

Market value has been defined as the price that a reasonably prudent purchaser would pay for the relevant product under the market conditions prevailing at the period of time in question and fair market value may be less than cost. Pope v. Intermountain Gas Co., 103 Idaho 217, 646 P.2d 988 (1982).

Geographical Terms.

Geographical terms and words descriptive of character, quality, or places of manufacture or of sale of articles can not be monopolized as trade-marks. American Home Benefit Ass'n v. United Am. Benefit Ass'n, 63 Idaho 754, 125 P.2d 1010 (1942).

Illegal Practices.

Neither buying in volume nor selling back at a profit is of itself illegal or inherently predatory. Such practices may become illegal or predatory only when used as methods of achieving a corner on a market, i.e., obtaining extensive control over the supply of a product so that the product's price might be artificially set in a manner most profitable to the controlling party, and a determination that such control or pending control exists cannot be made without reference to both the quantity of supply of the particular product and the defendant's share of control over that supply. Pope v. Intermountain Gas Co., 103 Idaho 217, 646 P.2d 988 (1982).

In General.

This chapter is patterned after the federal Sherman Antitrust Act, 15 U.S.C.S. § 1 et

seq.; while federal decisions are not binding in interpreting and applying these sections; they do offer persuasive guidance. Pope v. Intermountain Gas Co., 103 Idaho 217, 646 P.2d 988 (1982).

Insufficient Evidence.

Where the plaintiff makers of promissory notes to the defendant oil company failed to prove by a preponderance of the evidence that the agreement between the parties, whereby the makers of the notes would provide their land to build a gas station and sell the oil company's gasoline products, was an illegal tying arrangement or that the agreement substantially lessened competition or tended to create a monopoly in favor of the oil company, the Idaho Antitrust Law and the Idaho Anti-Price Discrimination Act were not applicable. Pollard Oil Co. v. Christensen, 103 Idaho 110, 645 P.2d 344 (1982).

Labor Combinations.

Labor is not commodity or article of commerce within purview of statutes. Robison v. Hotel & Restaurant Employees Local No. 782, 35 Idaho 418, 207 P. 132 (1922).

Lawful strike is not prevented by this section. Robison v. Hotel & Restaurant Employees Local No. 782, 35 Idaho 418, 207 P. 132 (1922).

This section raised no justiciable issue of state law when applied to action by independent contractors against labor organization for damages and injunctive relief from picketing. Simpkins v. Southwestern Idaho Painters Dist. Council No. 57, 95 Idaho 165, 505 P.2d 313 (1973).

Municipal Corporations.

Municipal corporations are not amenable to this chapter. Wilcox v. City of Idaho Falls, 23 F. Supp. 626 (D. Idaho 1938); Denman v. City of Idaho Falls, 51 Idaho 118, 4 P.2d 861 (1931).

The Idaho Antitrust Law does not apply to municipal corporations, and hence a holder of notes and bonds of a gas company, whose business was allegedly ruined by the fact that the city operated a hydro-electric plant and monopolized the gas company's business, could not maintain an action against the city for damages resulting to the holder from the city's acts. Wilcox v. City of Idaho Falls, 23 F. Supp. 626 (D. Idaho 1938). See however, Chattanooga Foundry & Pipe Works v. City of Atlanta, 203 U.S. 390, 27 S. Ct. 65, 51 L. Ed. 241 (1906).

Necessary Allegations.

In an action under the antitrust laws of Idaho, it was necessary that plaintiff not only allege sufficient facts to show a violation of the law by the defendant, but it must also appear that, by such violation of the law,

plaintiff had been injured in his business or property. Hurt v. Brandt, 37 Idaho 186, 215 P. 842 (1923).

Per se Violation.

Because agreements between health insurers and pharmacies to allegedly sell prescription drugs "below cost" did not attempt to fix prices to be charged in transactions with third parties, there was no per se illegal vertical combination. K. Hefner, Inc. v. Caremark, Inc., 128 Idaho 726, 918 P.2d 595 (1996).

Proof of Damages.

To meet the minimum requirement of proof in market exclusion cases in which lost profits are sought, the plaintiff must normally produce evidence falling into one of the following categories: (1) comparison of plaintiff's performance before and after the wrongful conduct under otherwise similar conditions, (2) comparison of performance of plaintiff's business, with comparable business in an unrestrained market otherwise comparable to plaintiff's market or (3) loss of specific business or customers. Pope v. Intermountain Gas Co., 103 Idaho 217, 646 P.2d 988 (1982).

In an antitrust case, there was no justification for a trial court's determination that the gross revenues of the defendant company and subsidiary provided a reasonable foundation for calculating the lost profits of plaintiffs, as such a method of figuring damages assumed, without any support in the record, that the defendant's operation would not have won any portion of the market absent antitrust violations, and that the plaintiffs had the capacity to assimilate all of the business which defendant performed, and that plaintiffs would have won that business over other insurers who chose not to participate in the action. Pope v. Intermountain Gas Co., 103 Idaho 217, 646 P.2d 988 (1982).

The factfinder may not determine damages by mere speculation and guesswork, and there must be a reasonable foundation established by the evidence from which the factfinder can calculate the amount of damages. It will be enough if the evidence shows the extent of the damages as a matter of just and reasonable inference, although the result be only approximate. Pope v. Intermountain Gas Co., 103 Idaho 217, 646 P.2d 988 (1982).

Sale of Services.

Language of this section which prohibits the selling of "any article or product at less than its fair market value, or at a less price than it is accustomed to demand or receive therefor in any other place under like conditions" plainly applies only to the sale of an "article or product"; the sale of services is not included. Pope v. Intermountain Gas Co., 103 Idaho 217, 646 P.2d 988 (1982).

Sales Below Cost.

This section does not speak in terms of prohibiting sales below cost. The phrase "below cost" in the world of economics is, without further definition, an imprecise term, not always indicative of anticompetitive conduct. Pope v. Intermountain Gas Co., 103 Idaho 217, 646 P.2d 988 (1982).

While "selling at a loss" might be one factor for a court to consider in determining whether or not specific intent exists to drive a competitor out of business, without additional proof and findings of fact, "selling at a loss" does not constitute a violation of the prohibition against the selling of "any article or product at less than its fair market value . . ." Pope v. Intermountain Gas Co., 103 Idaho 217, 646 P.2d 988 (1982).

Sufficiency of Complaint.

It was necessary that plaintiff allege not only sufficient facts to show violation of law by defendant, but it must also appear that, by reason of such violation of law, plaintiff had been injured in his business or property. Hurt v. Brandt, 37 Idaho 186, 215 P. 842 (1923).

Petition in action for threefold damages need not state facts showing right of action with all fullness and particularity required of indictment, but sufficiency of petition must be tested by local practice obtaining in civil actions. Hurt v. Brandt, 37 Idaho 186, 215 P. 842 (1923).

Sufficient to Convict.

Defendant, and the corporation for which he worked, violated this section when he tore down a sign placed in an adjoining building by plaintiff to notify its customers that it had moved. Twin Falls Farm & City Dist., Inc. v. D & B Supply Co., Inc., 96 Idaho 351, 528 P.2d 1286 (1974).

Unfair Competition.

One is not guilty of unfair competition unless, with the direct purpose of destroying his competitor's business, he forces prices lower than he can honestly believe will yield a profit when he shall have eventually disposed of the commodities purchased. Udelavitz v. Idaho Junk House, 46 Idaho 441, 268 P. 15 (1928).

In order to make out a case of "unfair competition," it was not necessary to show that any person had been actually deceived by defendant's conduct and led to purchase his goods in the belief that they were the goods of the plaintiff, or to deal with the defendant thinking that he was dealing with the plaintiff, and it was sufficient to show that such deception would be the natural and probable result of defendant's acts. American Home Benefit Ass'n v. United Am. Benefit Ass'n, 63 Idaho 754, 125 P.2d 1010 (1942).

The sale of goods of one manufacturer or vendor as those of another was "unfair com-

petition" and constituted a "fraud" which a court of equity could lawfully prevent by injunction. *American Home Benefit Ass'n v.*

RESEARCH REFERENCES

Am. Jur. — 54 *Am. Jur. 2d*, Monopolies, Restraints of Trade, and Unfair Trade Practices, § 668 et seq.

54A *Am. Jur. 2d*, Monopolies, Restraints of Trade, and Unfair Trade Practices, §§ 776, 1012 et seq.

C.J.S. — 58 *C.J.S.*, Monopolies, § 1 et seq.
A.L.R. — Right of corporation to indemnity for civil or criminal liability incurred by em-

United Am. Benefit Ass'n, 63 Idaho 754, 125 P.2d 1010 (1942).

ployee's violation of antitrust laws. 37 *A.L.R.3d* 1355.

Enforceability, insofar as restrictions would be reasonable, of contract containing unreasonable restrictions on competition. 61 *A.L.R.3d* 397.

Right of retail buyer of price-fixed product to sue manufacturer on state antitrust claim. 35 *A.L.R.6th* 245.

48-102. Legislative findings, purpose, interpretation and scope of chapter. — (1) The Idaho legislature finds that fair competition is fundamental to the free market system. The unrestrained interaction of competitive forces will yield the best allocation of Idaho's economic resources, the lowest prices, the highest quality, and the greatest material progress, while at the same time providing an environment conducive to the preservation of our democratic and social institutions.

(2) The purpose of this chapter is to maintain and promote economic competition in Idaho commerce, to provide the benefits of that competition to consumers and businesses in the state, and to establish efficient and economical procedures to accomplish these purposes and policies.

(3) The provisions of this chapter shall be construed in harmony with federal judicial interpretations of comparable federal antitrust statutes and consistent with this chapter's purposes, as set forth in subsection (2) of this section.

(4) This chapter applies to conduct proscribed herein that affects Idaho commerce.

History.

I.C., § 48-102, as added by 2000, ch. 148, § 3, p. 377.

STATUTORY NOTES

Prior Laws.

Former § 48-102, which comprised 1911, ch. 215, § 2, p. 689; reen. C.L. 107:2; C.S., § 2532; I.C.A., § 47-102, was repealed by S.L. 2000, ch. 148, § 1, effective July 1, 2000.

48-103. Definitions. — As used in this act:

(1) "Idaho commerce" means any economic activity occurring wholly or partly within the state of Idaho, or which affects economic activity within the state of Idaho.

(2) "Person" means any natural person, corporation, partnership, trust, association, or any other legal or commercial entity.

History.

I.C., § 48-103, as added by 2000, ch. 148, § 3, p. 377.

STATUTORY NOTES

Prior Laws.

Former § 48-103, which comprised 1911, ch. 215, § 3, p. 688; reen. C.L. 107:3; C.S., § 2533; I.C.A., § 47-103, was repealed by S.L. 2000, ch. 148, § 1, effective July 1, 2000.

Compiler's Notes.

The term "this act" in the introductory paragraph refers to S.L. 2000, ch. 148, which is compiled as §§ 18-7803 and 48-101 to 48-118.

48-104. Unreasonable restraint of trade or commerce. — A contract, combination, or conspiracy between two (2) or more persons in unreasonable restraint of Idaho commerce is unlawful.

History.

I.C., § 48-104, as added by 2000, ch. 148, § 3, p. 377.

STATUTORY NOTES

Prior Laws.

Former § 48-104, which comprised 1911, ch. 215, § 4, p. 688; reen. C.L. 107:4; C.S.,

§ 2534; I.C.A., § 47-104, was repealed by S.L. 2000, ch. 148, § 1, effective July 1, 2000.

JUDICIAL DECISIONS

ANALYSIS

Bid rigging.

Purpose.

Bid Rigging.

Because an agreement not to bid at a sale of county-owned land at public auction constituted illegal bid rigging under this section and § 1 of the Sherman Act, 15 U.S.C.S. § 1, the agreement was unenforceable, and a jury's award of damages for breach of the agreement was overturned. *Pines Grazing Ass'n v. Flying Joseph Ranch, LLC*, 151 Idaho 924, 265 P.3d 1136 (2011).

Purpose.

This section requires a claimant to show a

purpose to drive another out of business, reflecting the notion that unfair competition laws were enacted to protect competition, not competitors. This section strikes the balance between free competition and fair competition by offering relief only where a company can show a competitor's intent to drive the company out of business, rather than simply an intent to compete. *Wesco Autobody Supply, Inc. v. Ernest*, 149 Idaho 881, 243 P.3d 1069 (2010).

48-105. Monopolies. — It is unlawful to monopolize, attempt to monopolize, or combine or conspire to monopolize any line of Idaho commerce.

History.

I.C., § 48-105, as added by 2000, ch. 148, § 3, p. 377.

STATUTORY NOTES

Prior Laws.

Former § 48-105, which comprised 1911, ch. 215, § 5, p. 688; reen. C.L. 107:5; C.S.,

§ 2535; I.C.A., § 47-105, was repealed by S.L. 2000, ch. 148, § 1, effective July 1, 2000.

48-106. Acquisitions that substantially lessen competition. — (a) It is unlawful for a person to acquire, directly or indirectly, the whole or

any part of the stock, share capital, or other equity interest or the whole or any part of the assets of, another person engaged in Idaho commerce, where the effect of such acquisition may be substantially to lessen competition or to tend to create a monopoly of any line of Idaho commerce.

(2) This section shall not apply to persons purchasing the stock or other equity interest of another person solely for investment and not using those assets by voting or otherwise to bring about, or attempt to bring about, the substantial lessening of competition. Nothing contained in this section shall prevent a person engaged in Idaho commerce from causing the formation of subsidiary corporations or other business organizations, or from owning and holding all or a part of the stock or equity interest of such subsidiary corporations or other business organizations.

History.

I.C., § 48-106, as added by 2000, ch. 148, § 3, p. 377.

STATUTORY NOTES

Prior Laws.

Former § 48-106, which comprised 1911, ch. 215, § 6, p. 688; reen. C.L. 107:6; C.S., § 2536; I.C.A., § 47-106, was repealed by S.L. 2000, ch. 148, § 1, effective July 1, 2000.

48-107. Exempt activities. — (1) No provision of this chapter shall be construed to prohibit:

- (a) Activities that are exempt from the operation of the federal antitrust laws.
- (b) Activities required or affirmatively approved by any statute of this state or of the United States or by a regulatory agency of this state or of the United States duly acting under any constitutional or statutory authority vesting the agency with such power.
- (c) Activities of a municipality or its officers or employees acting in an official capacity, to the extent that those activities are authorized or directed by state law.
- (d) The existence of, or membership in, organizations instituted for the purpose of mutual help and not having capital stock or conducted for profit; nor shall the provisions of this act forbid or restrain individual members of such organizations from lawfully carrying out legitimate objectives of the organization.
- (e) Activities of any labor organization, individual members of the labor organization, or group of labor organizations, of any employer or group of employers, or of any groups of employees, if these activities are directed predominantly to labor objectives which are permitted under the laws of this state or of the United States.

(2) Persons engaged in the production of agricultural products may act together in associations, corporate or otherwise, with or without capital stock, in collectively processing, preparing for market, handling and marketing the products of these persons, to the extent permitted under the laws of this state or of the United States. These associations may have marketing agencies in common and such associations and their members may make the

necessary contracts and agreements to effect such purposes. However, such associations must conform to the requirements of chapter 26, title 22, Idaho Code, or alternatively satisfy the following requirements:

- (a) Operate for the mutual benefit of the members thereof, as producers;
- (b) Not deal in the products of nonmembers to an amount greater in value than such as are handled by it for members; and
- (c) Conform to one (1) or both of the following:
 - (i) That no member of the association is allowed more than one (1) vote because of the amount of stock or membership capital he may own therein; or
 - (ii) That the association does not pay dividends on stock or membership capital in excess of eight percent (8%) per annum.

History.

I.C., § 48-107, as added by 2000, ch. 148, § 3, p. 377; am. 2011, ch. 244, § 1, p. 656.

STATUTORY NOTES

Prior Laws.

Former § 48-107, which comprised 1911, ch. 215, § 7, p. 688; reen. C.L. 107:7; C.S., § 2537; I.C.A., § 47-107, was repealed by S.L. 2000, ch. 148, § 1, effective July 1, 2000.

Amendments.

The 2011 amendment, by ch. 244, added "or alternatively satisfy the following requirements" at the end of the introductory paragraph in subsection (2) and added paragraphs (2)(a) through (2)(c).

Compiler's Notes.

The term "this act" in paragraph (1)(d) refers to S.L. 2000, ch. 148, which is compiled as §§ 18-7803 and 48-101 to 48-118.

Effective Dates.

Section 2 of S.L. 2011, ch. 244 declared an emergency retroactively to July 1, 2000. Approved April 7, 2011.

JUDICIAL DECISIONS

Applicability.

In regulating the collection of solid waste within its city limits, a municipality is exercising its police power function under Idaho Const., Art. XII, § 2, and, under paragraph (1)(c) of this section, it is afforded a statutory

exemption from the Idaho competition act; since § 50-344 does not conflict with granting exclusive solid waste collection franchises, this exercise is valid. *Plummer v. City of Fruitland*, 139 Idaho 810, 87 P.3d 297 (2004).

48-108. Civil actions and settlements by the attorney general. —

- (1) Whenever the attorney general has reason to believe that any person is engaging, has engaged, or is about to engage in any act or practice declared unlawful by this chapter, the attorney general may bring an action in the name of the state against that person:
 - (a) To obtain a declaratory judgment that the act or practice violates the provisions of this chapter;
 - (b) To enjoin any act or practice that violates the provisions of this chapter by issuance of a temporary restraining order or preliminary or permanent injunction, without bond, upon the giving of appropriate notice;
 - (c) To recover on behalf of the state and its agencies actual damages or restitution;

(d) To recover civil penalties of up to fifty thousand dollars (\$50,000) per violation of section 48-104 or 48-105, Idaho Code, or any injunction, judgment or consent order issued or entered into pursuant to this chapter and reasonable expenses, investigative costs and attorney's fees; and

(e) To obtain an order requiring divestiture of any assets:

- (i) Acquired in violation of section 48-106, Idaho Code, to the extent determined necessary by the district court to avoid the creation of a monopoly or any likely substantial lessening of competition resulting from such transaction found violative of section 48-106, Idaho Code; or
- (ii) To restore competition in any line of Idaho commerce which has been eliminated by a violation of section 48-105, Idaho Code.

(2) The attorney general also may bring a civil action in the name of the state, as *parens patriae* on behalf of persons residing in this state, to secure monetary relief as provided under this chapter for injury directly or indirectly sustained by those persons because of any violation of section 48-104 or 48-105, Idaho Code, in accordance with the following provisions:

(a) The district court shall award the attorney general as monetary relief the total damages sustained for violations of section 48-104 or 48-105, Idaho Code, and the cost of suit, including a reasonable attorney's fee. The court shall increase any damage recovery to an amount not in excess of three (3) times the damages sustained if the court finds that the violation at issue constituted a *per se* violation of section 48-104, Idaho Code, or an intentional violation of section 48-105, Idaho Code. The court shall exclude from the amount of monetary relief awarded in such action any amount which duplicates amounts which have been awarded for the same injury already or which are allocable to persons who have excluded their claims pursuant to subsection (2)(c) of this section.

(b) In any action brought under this section, the attorney general shall, at such times, in such manner, and with such content as the district court may direct, cause notice of the *parens patriae* action to be given by publication. If the court finds that notice given solely by publication would deny due process of law to any person, the court shall direct the attorney general to give such notice as may be required by due process of law.

(c) Any person on whose behalf an action is brought under this section may elect to exclude from such adjudication the portion of the attorney general's claim for monetary relief attributable to him by filing notice of such election with the court within the time period specified in the notice of such action given to the persons to be benefited by the action. Any person failing to give such notice shall be barred during the pendency of such action from commencing an action in his or her own name for the injury alleged in such action and the final judgment in such action shall be *res judicata* as to any claim which could be brought by such person under this act based on the facts alleged or proven in such action.

(d) All damages shall be distributed in such a manner that will afford each person a reasonable opportunity to secure his appropriate portion of the net monetary relief.

(3) In lieu of instigating or continuing an action or proceeding, or to conclude an investigation commenced or contemplated under section 48-

109, Idaho Code, the attorney general may accept a consent decree with respect to any act or practice alleged to be a violation of this chapter. A consent decree may include a stipulation for the payment of civil penalties, the attorney general's reasonable expenses, investigative costs and attorney's fees, an agreement to pay damages or to allow for restitution of property or other things received in connection with a violation of this chapter, and agreed to injunctive provisions. Before any consent decree entered into pursuant to this section is effective, it must be approved by the district court and an entry made in the district court in the manner required for making an entry of judgment. If the consent decree submitted to the court is to settle an action brought under subsection (2) of this section, no part of the proposed settlement shall be given in such manner as the court directs. Once court approval is received, any breach of the conditions of a consent decree shall be treated as a violation of a court order, and shall be subject to all penalties provided by law for violation of court order, including the penalties set forth in section 48-111, Idaho Code.

(4) The attorney general may proceed under any antitrust laws in federal courts on behalf of this state or any of its political subdivisions or agencies.

History.

I.C., § 48-108, as added by 2000, ch. 148, § 3, p. 377.

STATUTORY NOTES

Gross References.

Attorney general, § 67-1401 et seq.

§ 2538; I.C.A., § 47-108, was repealed by 2000, ch. 148, § 1, effective July 1, 2000.

Prior Laws.

Former § 48-108, which comprised 1911, ch. 215, § 8, p. 688; reen. C.L. 107:8; C.S.,

Compiler's Notes.

The term "this act" in paragraph (2)(c) refers to S.L. 2000, ch. 148, which is compiled §§ 18-7803 and 48-101 to 48-118.

48-109. Civil investigations. — (1) Whenever the attorney general has reason to believe that a person is engaging or has engaged in any act or practice declared unlawful by this chapter, he may, prior to the institution of a civil proceeding thereon, execute in writing and cause to be served upon any person who is believed to have information, documentary material, physical evidence relevant to a civil investigation, a written civil investigative demand requiring that person to appear and give oral testimony, unsworn oath, concerning documentary material or information, or to produce relevant documentary material or physical evidence for examination, at a reasonable time and place as may be stated in the investigative demand, and to furnish any combination thereof, concerning the conduct of any Idaho commerce that is the subject matter of the investigation. The return date of a civil investigative demand shall be not less than thirty (30) days after the service of the demand.

(2) To accomplish the objectives and to carry out the duties prescribed in this chapter, the attorney general may also issue subpoenas to any person and conduct hearings in aid of any investigation or inquiry.

(3)(a) The scope of any civil investigative demand or subpoena shall

consistent with the scope of discovery as provided for by rule 26(b)(1) of the Idaho rules of civil procedure.

(b) Any person who is not the subject of investigation shall be reimbursed the reasonable expenses of complying with a civil investigative demand or subpoena.

(4) At any time before the return date specified in a civil investigative demand, or within thirty (30) days after the demand has been served, whichever period is later, 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.

(5) Any person who in good faith complies with a subpoena or investigative demand issued under this section shall be immune from criminal or civil liability for such compliance, so long as such person has complied with any express contractual obligation to notify a third party of the civil investigative demand or subpoena.

(6) Except as provided in subsection (7) of this section, any procedure, testimony taken, or material produced under this section shall be kept confidential by the attorney general before bringing an action against a person under this chapter for the violation under investigation unless confidentiality is waived by the person whose testimony is disclosed, or waived by the person who produced to the attorney general or his designee the material being disclosed, or the disclosure is authorized by court order.

(7) The attorney general or his designee may disclose the testimony or material to a person who has a need to know such information and is employed by this state, the United States, or any other state, if, before disclosure, the receiving official agrees in writing to comply with the confidentiality provisions of this section and the attorney general or his designee has determined prior to making such disclosure that disclosure to the receiving person is reasonably necessary to permit proper enforcement of the antitrust laws of the United States or any state.

(8) The attorney general or his designee may exclude from the place of any examination under this section any person, except the person being examined and that person's counsel.

History.

I.C., § 48-109, as added by 2000, ch. 148, § 3, p. 377.

STATUTORY NOTES

Cross References.

Attorney general, § 67-1401 et seq.

Prior Laws.

Former § 48-109, which comprised 1911,

ch. 215, § 9, p. 688; reen. C.L. 107:9, C.S. § 2539; I.C.A., § 47-109, was repealed by S.L. 2000, ch. 148, § 1, effective July 1, 2000.

48-110. Failure to obey civil investigative demand or subpoena

— (1) If any person fails or refuses to obey any subpoena or civil investigative demand issued by the attorney general, the attorney general may, after notice, apply to the district court and, after a hearing, request an order

ordering the person to comply with the subpoena or civil investigative demand issued by the attorney general.

(2) The court shall award the prevailing party reasonable expenses and attorney's fees incurred in obtaining or resisting an order under this section if the court finds that the attorney general's request for an order under this section or a person's resistance to obeying any subpoena or investigative demand, was without a reasonable basis in fact or law.

(3) Disobedience of any order entered under the provisions of this section shall be treated as a violation of a court order, and subject the offending person to all penalties provided by law for violations of court orders, including the payment of civil penalties of not more than ten thousand dollars (\$10,000).

History.

I.C., § 48-110, as added by 2000, ch. 148, § 3, p. 377.

STATUTORY NOTES

Cross References.

Attorney general, § 67-1401 et seq.

Prior Laws.

Former § 48-110, which comprised 1911,

ch. 215, § 10, p. 688; compiled and reen. C.L. 107:10; C.S., § 2540; I.C.A., § 47-110, was repealed by S.L. 2000, ch. 148, § 1, effective July 1, 2000.

48-111. Violation of court orders and consent decrees — Penalties.

— Any person who violates the terms of a consent order entered into pursuant to section 48-108, Idaho Code, or any other judgment or final order entered into under the provisions of this chapter, shall forfeit and pay a civil penalty of not more than fifty thousand dollars (\$50,000) for each violation, the amount of the penalty to be determined by the district court issuing the judgment or order, or approving the consent decree.

History.

I.C., § 48-111, as added by 2000, ch. 148, § 3, p. 377.

STATUTORY NOTES

Prior Laws.

Former § 48-111, which comprised 1911, ch. 215, § 11, p. 688; reen. C.L. 107:11; C.S.,

§ 2541; I.C.A., § 47-111, was repealed by S.L. 2000, ch. 148, § 1, effective July 1, 2000.

48-112. Additional relief of district court authorized. — When the state prevails in any action brought under section 48-108, Idaho Code, the court shall award reasonable costs and attorney's fees to the attorney general. In addition, the court may:

(1) Make orders or judgments as necessary to prevent the use or employment by a person of any act or practice declared unlawful by this act;

(2) Make orders or judgments as necessary to compensate persons for damages sustained or to provide for restitution to persons of money, property or other things received from persons in connection with a violation of this chapter;

(3) Appoint a receiver to oversee assets or order sequestration of assets whenever it appears 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 section and assess the expenses of a master receiver or escrow agent against the defendant; and

(4) Grant other appropriate relief.

History.

I.C., § 48-112, as added by 2000, ch. 148, § 3, p. 377.

STATUTORY NOTES

Cross References.

Attorney general, § 67-1401 et seq.

§ 2542; I.C.A., § 47-112, was repealed by S.L. 2000, ch. 148, § 1, effective July 1, 2000.

Prior Laws.

Former § 48-112, which comprised 1911, ch. 215, § 12, p. 688; reen. C.L. 107:12; C.S.,

Compiler's Notes.

The term "this act" at the end of subsection (1) refers to S.L. 2000, ch. 148, which is compiled as §§ 18-7803 and 48-101 to 48-118.

48-113. Private causes of action. — (1) Any person injured directly or threatened with direct injury by reason of anything prohibited by this chapter, may bring an action for injunctive relief, damages, and, as determined by the court, reasonable costs and attorney's fees. The court shall exclude from the amount of monetary relief awarded to a plaintiff under this section any amount which duplicates amounts allocable to any other actual or potential plaintiff including, without limitation, potential claims by the attorney general on behalf of indirect purchasers for the same conduct of injury.

(2) If the district court finds that the violation at issue constituted a per se violation of section 48-104, Idaho Code, or an intentional violation of section 48-105, Idaho Code, it shall increase the recovery to an amount not in excess of three (3) times the damages sustained.

History.

I.C., § 48-113, as added by 2000, ch. 148, § 3, p. 377.

STATUTORY NOTES

Cross References.

Attorney general, § 67-1401 et seq.

ch. 215, § 13, p. 688; reen. C.L. 107:13; C.S., § 2543; I.C.A., § 47-113, was repealed by S.L. 2000, ch. 148, § 1, effective July 1, 2000.

Prior Laws.

Former § 48-113, which comprised 1911,

RESEARCH REFERENCES

A.L.R. — Right of retail buyer of price-fixed product to sue manufacturer on state anti-trust claim. 35 A.L.R.6th 245.

48-114. Awards to the attorney general — Use of moneys. — All costs and fees recovered by the attorney general under the terms of this

chapter shall be remitted to the consumer protection account [consumer protection fund]. Such costs and fees deposited into the consumer protection account [consumer protection fund] under this chapter shall be treated as interaccount receipts and may be expended pursuant to interaccount appropriation and shall be used for the furtherance of the attorney general's duties and activities under this chapter. All penalties recovered under section 48-108(1)(d), 48-110 or 48-111, Idaho Code, or actual damages or restitution recovered under section 48-108(1)(c), Idaho Code, shall be remitted to the general fund.

History.

I.C., § 48-114, as added by 2000, ch. 148, § 3, p. 377.

STATUTORY NOTES

Cross References.

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

Prior Laws.

Former § 48-114, which comprised 1911, ch. 215, § 14, p. 688; reen. C.L. 107:14; C.S., § 2544; I.C.A., § 47-114, was repealed by S.L. 2000, ch. 148, § 1, effective July 1, 2000.

Compiler's Notes.

The bracketed insertions at the end of the first sentence and near the beginning of the second sentence were added by the compiler to correct the name of the referenced fund. See § 48-606.

48-115. Statute of limitations. — (1) Any action brought by the attorney general pursuant to this chapter is barred if it is not commenced within four (4) years after the cause of action accrues.

(2) Any other action brought pursuant to this chapter is barred if it is not commenced within four (4) years after the cause of action accrues, or within one (1) year after the conclusion of an action brought by the state pursuant to this chapter based in whole or in part on any matter complained of in the subsequent action, whichever is the latter.

(3) The foregoing statute of limitations shall be tolled during any period when the defendant in any action fraudulently concealed the events upon which the cause of action is based.

History.

I.C., § 48-115, as added by 2000, ch. 148, § 3, p. 377.

STATUTORY NOTES

Cross References.

Attorney general, § 67-1401 et seq.

ch. 215, § 15, p. 688; reen. C.L. 107:15; C.S., § 2545; I.C.A., § 47-115, was repealed by S.L. 2000, ch. 148, § 1, effective July 1, 2000.

Prior Laws.

Former § 48-115, which comprised 1911,

48-116. Action not barred because it affects interstate or foreign commerce. — No action under this chapter shall be barred on the ground that the activity or conduct complained of in any way affects or involves interstate or foreign commerce.

History.

I.C., § 48-116, as added by 2000, ch. 148, § 3, p. 377.

STATUTORY NOTES**Prior Laws.**

Former § 48-116, which comprised 1911, ch. 215, § 16, p. 688; reen. C.L. 107:16; C.S., § 2546; I.C.A., § 47-116, was repealed by S.L. 2000, ch. 148, § 1, effective July 1, 2000.

48-117. Service of notice. — Service of any notice, civil investigative demand, or subpoena under this chapter shall be made personally within this state, but if personal service cannot be obtained, substituted service may be made by mailing service by registered or certified mail to the last known place of business, residence, or abode of the person within or without this state.

History.

I.C., § 48-117, as added by 2000, ch. 148, § 3, p. 377.

STATUTORY NOTES**Prior Laws.**

Former § 48-117, which comprised 1911, ch. 215, §§ 17, 18, p. 688; compiled and reen. C.L. 107:17; C.S., § 2547; I.C.A., § 47-117, was repealed by S.L. 2000, ch. 148, § 1, effective July 1, 2000.

48-118. Venue. — Any action, application, or motion brought by the attorney general against a person under this chapter may be filed in the district court of the county in which the 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 pleading may be brought in any district court in this state.

History.

I.C., § 48-118, as added by 2000, ch. 148, § 3, p. 377.

STATUTORY NOTES**Prior Laws.**

Former § 48-118, which comprised 1951, ch. 197, § 1, p. 421, was repealed by S.L. 2000, ch. 148, § 1, effective July 1, 2000.

48-119. Purpose of extension to distributors of publications. [Repealed.]

STATUTORY NOTES**Compiler's Notes.**

This section, which comprised 1951, ch. 197, § 2, p. 421, was repealed by S.L. 2000, ch. 148, § 1, effective July 1, 2000.

CHAPTER 2**ANTI-PRICE DISCRIMINATION ACT****SECTION.****48-201. Definitions.**

48-202. Discrimination unlawful — Differentials — Customer selection — Price changes — Rebutting prima facie case — Commissions or brokerages prohibited — Customer discrimination or

SECTION.

receipt of discrimination prohibited.
48-203. Cooperative associations of persons injured by acts.
48-205. Title of act.
48-206. Separability.

48-201. Definitions. — The following terms for the purpose are hereby defined as follows:

(a) "Person" means the plural as well as the singular and shall include an individual, partnership, association, a joint stock company, but not an incorporated or unincorporated organization.

(b) The term "price" as used herein shall mean the net price after deduction of all discounts, rebates or other price concessions allowed by the seller.

(c) The term "commerce" means trade or commerce within the state.

History.

1937, ch. 229, § 1, p. 406.

STATUTORY NOTES**Compiler's Notes.**

The term "this act" in the introductory paragraph refers to S.L. 1937, ch. 229, § 1, which is compiled as §§ 48-201 to 48-206.

JUDICIAL DECISIONS**Insufficient Evidence.**

Where the plaintiff makers of promissory notes to the defendant oil company failed to prove by a preponderance of the evidence that the agreement between the parties, whereby the makers of the notes would provide their land to build a gas station and sell the oil company's gasoline products, was an illegal

tying arrangement or that the defendant substantially lessened competition to create a monopoly in favor of the defendant company, the Idaho Antitrust Law as amended was not applicable. Pollack v. Christensen, 103 Idaho 110, 688 P.2d 1000 (1982).

48-202. Discrimination unlawful — Differentials — Customer selection — Price changes — Rebutting prima facie case — Commissions or brokerages prohibited — Customer discrimination or receipt of discrimination prohibited. — (a) It shall be unlawful for any person engaged in commerce, in the course of such commerce, either directly or indirectly, to discriminate in price between different purchasers of commodities of like grade and quality or to discriminate in price between different sections, communities or cities or portions thereof or between different locations in such sections, communities, cities or portions of this state, where the effect of such discriminations may be to lessen competition or tend to create a monopoly in any line of commerce or to injure, destroy, or prevent competition with any person w