

TITLE 18
CRIMES AND PUNISHMENTS

CHAPTER 24
THEFT

18-2401. CONSOLIDATION OF THEFT OFFENSES. (1) Conduct denominated theft in this chapter constitutes a single offense superceding the separate offenses previously known as embezzlement, extortion, false pretenses, cheats, misrepresentations, larceny and receiving stolen goods.

(2) An accusation of theft may be supported by evidence that it was committed in any manner that would be theft under this chapter, notwithstanding the specification of a different manner in the indictment, information or complaint, subject only to the power of the court to ensure fair trial by granting a continuance or other appropriate relief where the conduct of the defense would be prejudiced by lack of fair notice or by surprise.

[18-2401, added 1981, ch. 183, sec. 2, p. 319.]

18-2402. DEFINITIONS. The following definitions are applicable to this chapter:

(1) "Appropriate." To "appropriate" property of another to oneself or a third person means:

(a) To exercise control over it, or to aid a third person to exercise control over it, permanently or for so extended a period or under such circumstances as to acquire the major portion of its economic value or benefit; or

(b) To dispose of the property for the benefit of oneself or a third person.

(2) "Deception" means knowingly to:

(a) Create or confirm another's impression that is false and that the offender does not believe to be true; or

(b) Fail to correct a false impression that the offender previously has created or confirmed; or

(c) Prevent another from acquiring information pertinent to the disposition of the property involved; or

(d) Sell or otherwise transfer or encumber property, failing to disclose a lien, adverse claim, or other legal impediment to the enjoyment of the property whether such impediment is or is not valid or is or is not a matter of official record; or

(e) Promise performance that the offender does not intend to perform or knows will not be performed. Failure to perform, standing alone, is not evidence that the offender did not intend to perform.

(3) "Deprive." To "deprive" another of property means:

(a) To withhold it or cause it to be withheld from him permanently or for so extended a period or under such circumstances that the major portion of its economic value or benefit is lost to him; or

(b) To dispose of the property in such manner or under such circumstances as to render it unlikely that an owner will recover such property.

(4) "Obtain" means:

(a) In relation to property, to bring about a transfer of interest or possession, whether to the offender or to another; and

(b) In relation to labor or services, to secure the performance thereof.

(5) "Obtains or exerts control" over property includes but is not limited to the taking, carrying away, or the sale, conveyance, or transfer of title to, or interest in, or possession of property.

(6) "Owner." When property is taken, obtained, or withheld by one (1) person from another person, an owner thereof means any person who has a right to possession thereof superior to that of the taker, obtainer, or withholder. "Owner" includes any person who physically delivers or transfers goods or property to a purchaser through an agreement or contract in which the purchaser has entered into fraudulently by having no intention to pay any amount for the goods or property. For the purposes of this chapter and regardless of any contrary provisions of [chapter 2, title 28](#), Idaho Code, such owner retains a superior right to possession of such goods or property over the fraudulent purchaser.

(7) "Person" means an individual, corporation, association, public or private corporation, city or other municipality, county, state agency, or the state of Idaho.

(8) "Property" means anything of value. Property includes real estate, money, commercial instruments, admission or transportation tickets, written instruments representing or embodying rights concerning anything of value, labor or services, or otherwise of value to the owner; things growing on, affixed to, or found on land, or part of or affixed to any building; electricity, gas, steam, and water; birds, animals and fish, which ordinarily are kept in a state of confinement; food and drink; samples, cultures, microorganisms, specimens, records, recordings, documents, blueprints, drawings, maps, and whole or partial copies, descriptions, photographs, prototypes or models thereof; or any other articles, materials, devices, substances and whole or partial copies, descriptions, photographs, prototypes or models thereof which constitute, represent, evidence, reflect or record a secret scientific, technical, merchandising, production or management information, design, process, procedure, formula, invention, or improvement.

(9) "Service" includes but is not limited to labor, professional service, transportation service, the supplying of hotel accommodations, restaurant services, entertainment, (a communication system) the supplying of equipment for use, and the supplying of commodities of a public utility nature such as gas, electricity, steam and water. A ticket or equivalent instrument that evidences a right to receive a service is not in itself service but constitutes property within the meaning of subsection (8) of this section.

(10) "Stolen property" means property over which control has been obtained by theft.

(11) "Value." The value of property shall be ascertained as follows:

(a) Except as otherwise specified in this section, value means the market value of the property at the time and place of the crime, or if such cannot be satisfactorily ascertained, the cost of replacement of the property within a reasonable time after the crime.

(b) Whether or not they have been issued or delivered, certain written instruments, not including those having a readily ascertainable market value such as some public and corporate bonds and securities, shall be evaluated as follows:

1. The value of an instrument constituting an evidence of debt, such as a check, draft or promissory note, shall be deemed the amount due or collectible thereon or thereby, such figure ordinarily being the face amount of the indebtedness less any portion thereof which has been satisfied.

2. The value of a ticket or equivalent instrument that evidences a right to receive a transportation, entertainment or other service shall be deemed the price stated thereon, if any; and if no price is stated thereon, the value shall be deemed the price of such ticket or equivalent instrument that the issuer charges the general public.

3. The value of any other instrument that creates, releases, discharges or otherwise affects any valuable legal right, privilege or obligation shall be deemed the greatest amount of economic loss the owner of the instrument might reasonably suffer by virtue of the loss of the instrument.

(c) When the value of property cannot be satisfactorily ascertained pursuant to the standards set forth in paragraphs (a) and (b) of this subsection, its value shall be deemed to be one thousand dollars (\$1,000) or less.

(d) For the purpose of establishing value of any written instrument, the interest of any owner or owners entitled to part or all of the property represented by such instrument, by reason of such instrument, may be shown, even if another owner may be named in the complaint, information or indictment.

[18-2402, added 1981, ch. 183, sec. 2, p. 320; am. 1994, ch. 132, sec. 1, p. 301; am. 1999, ch. 147, sec. 1, p. 417; am. 2022, ch. 212, sec. 1, p. 682.]

18-2403. THEFT. (1) A person steals property and commits theft when, with intent to deprive another of property or to appropriate the same to himself or to a third person, he wrongfully takes, obtains or withholds such property from an owner thereof.

(2) Theft includes a wrongful taking, obtaining or withholding of another's property, with the intent prescribed in subsection (1) of this section, committed in any of the following ways:

(a) By deception obtains or exerts control over property of the owner;

(b) By conduct heretofore defined or known as larceny; common law larceny by trick; embezzlement; extortion; obtaining property, money or labor under false pretenses; or receiving stolen goods;

(c) By acquiring lost property. A person acquires lost property when he exercises control over property of another which he knows to have been lost or mislaid, or to have been delivered under a mistake as to the identity of the recipient or the nature or amount of the property, without taking reasonable measures to return such property to the owner; or a person commits theft of lost or mislaid property when he:

1. Knows or learns the identity of the owner or knows, or is aware of, or learns of a reasonable method of identifying the owner; and

2. Fails to take reasonable measures to restore the property to the owner; and

3. Intends to deprive the owner permanently of the use or benefit of the property.

(d) By false promise:

1. A person obtains property by false promise when pursuant to a scheme to defraud, he obtains property of another by means of a representation, express or implied, that he or a third person will in the future engage in particular conduct, and when he does not intend to engage in such conduct or, as the case may be, does not believe that the third person intends to engage in such conduct.

2. In any prosecution for theft based upon a false promise, the defendant's intention or belief that the promise would not be performed may not be established by or inferred from the fact alone that such promise was not performed. Such a finding may be based only upon evidence establishing that the facts and circumstances of the case are consistent with guilty intent or belief and inconsistent with innocent intent or belief, and excluding to a moral certainty every reasonable hypothesis except that of the defendant's intention or belief that the promise would not be performed;

(e) By extortion. A person obtains property by extortion when he compels or induces another person to deliver such property to himself or to a third person by means of instilling in him a fear that, if the property is not so delivered, the actor or another will:

1. Cause physical injury to some person in the future; or
2. Cause damage to property; or
3. Engage in other conduct constituting a crime; or
4. Accuse some person of a crime or cause criminal charges to be instituted against him; or
5. Expose a secret or publicize an asserted fact, whether true or false, tending to subject some person to hatred, contempt or ridicule; or
6. Cause a strike, boycott or other collective labor group action injurious to some person's business; except that such a threat shall not be deemed extortion when the property is demanded or received for the benefit of the group in whose interest the actor purports to act; or
7. Testify or provide information or withhold testimony or information with respect to another's legal claim or defense; or
8. Use or abuse his position as a public servant by performing some act within or related to his official duties, or by failing or refusing to perform an official duty, in such manner as to affect some person adversely; or
9. Perform any other act which would not in itself materially benefit the actor but which is calculated to harm another person materially with respect to his health, safety, business, calling, career, financial condition, reputation or personal relationships.

(3) A person commits theft when he knowingly takes or exercises unauthorized control over, or makes an unauthorized transfer of an interest in, the property of another person, with the intent of depriving the owner thereof.

(4) A person commits theft when he knowingly receives, retains, conceals, obtains control over, possesses, or disposes of stolen property, knowing the property to have been stolen or under such circumstances as would reasonably induce him to believe that the property was stolen, and

- (a) Intends to deprive the owner permanently of the use or benefit of the property; or

(b) Knowingly uses, conceals or abandons the property in such manner as to deprive the owner permanently of such use or benefit; or

(c) Uses, conceals, or abandons the property knowing such use, concealment or abandonment probably will deprive the owner permanently of such use or benefit.

(5) Theft of labor or services or use of property.

(a) A person commits theft when he obtains the temporary use of property, labor or services of another which are available only for hire, by means of threat or deception or knowing that such use is without the consent of the person providing the property, labor or services.

(b) A person commits theft when after renting or leasing a motor vehicle or other equipment under an agreement in writing which provides for the return of the vehicle or other equipment to a particular place at a particular time, he willfully or intentionally fails to return the vehicle or other equipment to that place within forty-eight (48) hours after the time specified.

(c) A person commits theft if, having control over the disposition of services of others, to which he is not entitled, he knowingly diverts such services to his own benefit or to the benefit of another not entitled thereto.

[18-2403, added 1981, ch. 183, sec. 2, p. 322; am. 1985, ch. 216, sec. 1, p. 525; am. 2001, ch. 112, sec. 1, p. 401; am. 2017, ch. 215, sec. 1, p. 520.]

18-2404. PRIMA FACIE EVIDENCE -- THEFT BY LESSEE. It shall be prima facie evidence that a person knowingly obtains or exerts unauthorized control over property of the owner when a lessee of the personal property of another, leased or rented by written instrument:

(1) Fails or refuses to return such personal property to its owner after the lease or rental agreement has expired:

(a) Within ten (10) days; and

(b) Within forty-eight (48) hours after written demand for return thereof is personally served or given by registered mail delivered to the last known address provided in such lease or rental agreement; or

(2) When the lease or rent of such personal property is obtained by presentation of identification to the lessor or renter thereof which is false, fictitious, or knowingly not current to name, address, place of employment, or other identification.

[18-2404, added 1981, ch. 183, sec. 2, p. 324.]

18-2405. PROOF OF FRAUDULENT INTENT IN PROCURING FOOD, LODGING OR OTHER ACCOMMODATIONS. Proof that lodging, food or other accommodation was obtained by any deception or false pretense, or by any false or fictitious show or pretense of any baggage or other property, or that any person absconded without paying or offering to pay for such food, lodging or other accommodation, or that any such person surreptitiously removed, or attempted to remove, his or her baggage, shall be prima facie proof of the intent necessary for the theft of the same.

[18-2405, added 1981, ch. 183, sec. 2, p. 324.]

18-2406. DEFENSES. (1) It is no defense to a charge of theft of property that the offender has an interest therein, when the owner also has an interest to which the offender is not entitled.

(2) Where the property involved is that of the offender's spouse, no prosecution for theft may be maintained unless the parties were not living together as man and wife and were living in separate abodes at the time of the alleged theft.

(3) In any prosecution for theft committed by trespassory taking or the offense previously known as embezzlement, it is an affirmative defense that the property was appropriated openly and avowedly, and under a claim of right made in good faith. It is not a defense to a theft committed by such conduct that the accused intended to restore the property taken, but may be considered by the court to mitigate punishment if the property is voluntarily and actually restored (or tendered) prior to the filing of any complaint or indictment relating thereto, and this provision does not excuse the unlawful retention of the property of another to offset or pay demands held against such other person.

(4) In any prosecution for theft by extortion committed by instilling in the victim a fear that he or another person would be charged with a crime, it is an affirmative defense that the defendant reasonably believed the threatened charge to be true and that his sole purpose was to compel or induce the victim to take reasonable action to make good the wrong which was the subject of such threatened charge.

(5) It is no defense to a prosecution for theft under a provision of this chapter that the defendant, by reason of the same conduct, also committed an act specified as a crime in another chapter of [title 18](#), or another title of the Idaho Code.

[18-2406, added 1981, ch. 183, sec. 2, p. 324; am. 2008, ch. 23, sec. 1, p. 36.]

18-2407. GRADING OF THEFT. Theft is divided into two (2) degrees, grand theft and petit theft.

(1) Grand theft.

(a) A person is guilty of grand theft when he commits a theft as defined in this chapter and when the property, regardless of its nature and value, is obtained by extortion committed by instilling in the victim a fear that the actor or another person will:

1. Cause physical injury to some person in the future; or
2. Cause damage to property; or
3. Use or abuse his position as a public servant by engaging in conduct within or related to his official duties, or by failing or refusing to perform an official duty, in such manner as to affect some person adversely.

(b) A person is guilty of grand theft when he commits a theft as defined in this chapter and when:

1. The value of the property taken exceeds one thousand dollars (\$1,000); or
2. The property consists of a public record, writing or instrument kept, filed or deposited according to law with or in the keeping of any public office or public servant; or
3. The property consists of a check, draft or order for the payment of money upon any bank, or a check, draft or order account number, or a financial transaction card or financial transaction card ac-

count number as those terms are defined in section [18-3122](#), Idaho Code; or

4. The property, regardless of its nature or value, is taken from the person of another; or

5. The property, regardless of its nature and value, is obtained by extortion; or

6. The property consists of one (1) or more firearms, rifles or shotguns; or

7. The property taken or deliberately killed is livestock or any other animal exceeding one hundred fifty dollars (\$150) in value.

8. When any series of thefts, comprised of individual thefts having a value of one thousand dollars (\$1,000) or less, are part of a common scheme or plan, the thefts may be aggregated in one (1) count and the sum of the value of all of the thefts shall be the value considered in determining whether the value exceeds one thousand dollars (\$1,000); or

9. The property has an aggregate value over fifty dollars (\$50.00) and is stolen during three (3) or more incidents of theft during a criminal episode. For purposes of this subparagraph a "criminal episode" shall mean a series of unlawful acts committed over a period of up to three (3) days; or

10. The property is anhydrous ammonia.

(2) Petit theft. A person is guilty of petit theft when he commits a theft as defined in this chapter and his actions do not constitute grand theft.

[18-2407, added 1981, ch. 183, sec. 2, p. 325; am. 1982, ch. 272, sec. 1, p. 703; am. 1983, ch. 19, sec. 1, p. 54; am. 1987, ch. 84, sec. 1, p. 158; am. 1994, ch. 132, sec. 2, p. 303; am. 1994, ch. 346, sec. 21, p. 1097; am. 1998, ch. 326, sec. 1, p. 1054; am. 2000, ch. 243, sec. 1, p. 679; am. 2002, ch. 257, sec. 1, p. 747; am. 2002, ch. 326, sec. 1, p. 917.]

18-2408. PUNISHMENT FOR THEFT. (1) Grand theft committed in a manner prescribed in subsection (1) (a) of section [18-2407](#), Idaho Code, is a felony punishable by fine not exceeding ten thousand dollars (\$10,000) or imprisonment in the state prison for not less than one (1) year nor more than twenty (20) years, or by both such fine and imprisonment.

(2) (a) Grand theft committed in a manner prescribed in subsection (1) (b) 1., 2., 3., 4., 5., 6., 8., 9. or 10. of section [18-2407](#), Idaho Code, or a felony committed in a manner prescribed in section [18-2415](#), Idaho Code, is a felony punishable by a fine not exceeding five thousand dollars (\$5,000), or by imprisonment in the state prison for not less than one (1) year nor more than fourteen (14) years, or by both such fine and imprisonment.

(b) Grand theft committed in a manner prescribed in subsection (1) (b) 7. of section [18-2407](#), Idaho Code, is a felony punishable by a fine of not less than one thousand dollars (\$1,000) nor more than five thousand dollars (\$5,000), and the minimum fine shall not be suspended or withheld, or by imprisonment in the state prison for not less than one (1) year nor more than fourteen (14) years, or by both such fine and imprisonment. In addition, the court shall assess civil damages as provided in section [25-1910](#), Idaho Code.

(3) Petit theft is a misdemeanor punishable by a fine not exceeding one thousand dollars (\$1,000), or by imprisonment in the county jail not exceeding one (1) year or by both.

[18-2408, added 1981, ch. 183, sec. 2, p. 325; am. 1983, ch. 19, sec. 2, p. 55; am. 1987, ch. 84, sec. 2, p. 159; am. 1995, ch. 216, sec. 1, p. 754; am. 2001, ch. 112, sec. 2, p. 403; am. 2002, ch. 257, sec. 2, p. 748; am. 2002, ch. 289, sec. 1, p. 837.]

18-2409. PLEADING AND PROOF. (1) Where it is an element of the crime charged that property was taken from the person or obtained by extortion, an indictment, complaint or information for theft must so specify. In all other cases, an indictment, information or complaint for theft is sufficient if it alleges that the defendant stole property of the nature or value required for the commission of the crime charged without designating the particular way or manner in which such property was stolen or the particular theory of theft involved.

(2) Proof that the defendant engaged in any conduct constituting theft as defined in section [18-2403](#), Idaho Code, is sufficient to support any indictment, information or complaint for theft other than one charging theft by extortion. An indictment, complaint or information charging theft by extortion must be supported by proof establishing theft by extortion.

[18-2409, added 1981, ch. 183, sec. 2, p. 325; am. 1982, ch. 272, sec. 2, p. 704.]

18-2410. PROHIBITING DEFACING, ALTERING OR OBLITERATING NUMBERS -- SALES PROHIBITED -- PENALTY. (1) Any person who, with intent to deceive or defraud others, shall deface, alter, remove, cover, destroy or obliterate the manufacturer's serial or identification number on any item of property shall be guilty of a felony.

(2) Any person or persons who, with intent to deceive or defraud others, knowingly disposes of, sells, trades or barter, or offers to dispose of, sell, trade or barter any item of property on which the manufacturer's serial or identification number has been defaced, altered, removed, covered or obliterated shall be guilty of a felony.

(3) Any violation of the provisions of this act [this section] shall be punishable by a fine not to exceed one thousand dollars (\$1,000) or by imprisonment of not more than five (5) years in the state penitentiary or both.

[18-2410, added 1982, ch. 214, sec. 1, p. 588.]

18-2411. UNLAWFUL USE OF THEFT DETECTION SHIELDING DEVICES. (1) A person commits unlawful use of a theft detection shielding device when he knowingly manufacturers [manufactures], sells, offers for sale or distributes any laminated, or coated bag or device peculiar to shielding and intended to shield merchandise from detection by an electronic or magnetic theft alarm sensor.

(2) A person commits unlawful possession of a theft detection shielding device when he knowingly possesses any laminated or coated bag or device peculiar to and designed for shielding and intended to shield merchandise from detection by an electronic or magnetic theft alarm sensor, with the intent to commit theft.

(3) A person commits unlawful possession of a theft detection device remover when he knowingly possesses any tool or device designed to allow the removal of any theft detection device from any merchandise without the permission of the merchant or person owning or holding the merchandise.

(4) A person commits the offense of unlawful removal of a theft detection device when he intentionally removes the device from a product prior to purchase.

(5) A person who commits unlawful use of a theft detection shielding device, unlawful possession of a theft detection shielding device, unlawful possession of a theft detection device remover or unlawful removal of a theft detection device shall be guilty of a misdemeanor for a first offense of a violation of the provisions of this section. Any person who pleads guilty to or is found guilty of a violation of the provisions of this section, or any substantially conforming statute in another state or local jurisdiction for a second time within five (5) years, notwithstanding the form of the judgment(s) or withheld judgment(s), shall be guilty of a felony and shall be punished by a fine not to exceed one thousand dollars (\$1,000) or shall be sentenced to the custody of the state board of correction for a term not to exceed five (5) years or both.

[18-2411, added 2000, ch. 129, sec. 1, p. 305.]

18-2415. SCANNING -- REENCODING. (1) As used in this section, the term:

(a) "Scanning device" means a scanner, reader, or any other electronic device that is used to access, read, scan, obtain, memorize, or store, temporarily or permanently, information encoded on the magnetic strip or stripe of a payment card.

(b) "Reencoder" means an electronic device that places encoded information from the magnetic strip or stripe of a payment card onto the magnetic strip or stripe of a different payment card.

(c) "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.

(d) "Merchant" is defined as an owner or operator of any retail mercantile establishment or any agent, employee, lessee, consignee, officer, director, franchisee, or independent contractor of such owner or operator. A "merchant" means a person who receives from an authorized user of a payment card, or someone the person believes to be an authorized user, a payment card or information from a payment card, or what the person believes to be a payment card or information from a payment card, as

the instrument for obtaining, purchasing or receiving goods, services, money or anything else of value from the person.

(2) It is a felony for a person to use or possess with intent to use:

(a) A scanning device to access, read, obtain, memorize, or store, temporarily or permanently, information encoded on the magnetic strip or stripe of a payment card without the permission of the authorized user of the payment card and with the intent to defraud the authorized user, the issuer of the authorized user's payment card, or a merchant.

(b) A reencoder to place information encoded on the magnetic strip or stripe of a payment card onto the magnetic strip or stripe of a different card without the permission of the authorized user of the card from which the information is being reencoded and with the intent to defraud the authorized user, the issuer of the authorized user's payment card, or a merchant.

(3) Any person who commits a violation pursuant to this section shall be punished pursuant to the provisions of section [18-2408](#) (2) (a), Idaho Code.

[18-2415, added 2002, ch. 289, sec. 2, p. 838.]

18-2416. SHORT TITLE. This act may be known and cited as the "Unused Merchandise Ownership Protection Act."

[18-2416, added 2000, ch. 130, sec. 1, p. 306.]

18-2417. DEFINITIONS. As used in the unused merchandise ownership protection act:

(1) "Open market" may include a "swap meet," an "indoor swap meet" or a "flea market" and means an event at which two (2) or more persons offer personal property for sale or exchange and either:

(a) A fee is charged for those persons selling or exchanging personal property or a fee is charged to the public for admission to the event; or

(b) The event is held more than two (2) times in a twelve (12) month period;

(2) "Unused merchandise" means tangible personal property that, since its original production or manufacturing, has never been used or consumed and, if placed in a package or container, is still in its original and unopened package or container; and

(3) "Vendor of unused merchandise" means a person who offers unused merchandise for sale or exchange at an open market.

[18-2417, added 2000, ch. 130, sec. 1, p. 306.]

18-2418. PROHIBITED SALES -- CERTAIN MERCHANDISE. (1) It is a violation of the unused merchandise ownership protection act for a vendor of unused merchandise to sell or offer for sale any baby food or infant formula, cosmetic, drug or medical device at an open market without displaying a written valid authorization from the manufacturer or distributor of the merchandise. The authorization shall identify the vendor of unused merchandise and shall specify the merchandise that the vendor is authorized to sell.

(2) As used in this section:

(a) "Baby food or infant formula" means unused merchandise consisting of a food product manufactured, packaged and labeled specifically for consumption by a child less than two (2) years of age;

(b) "Cosmetic" means unused merchandise, other than soap, that is:

- (i) Intended to be rubbed, poured, sprinkled or sprayed on, introduced into or otherwise applied to the human body or any part thereof for cleansing, beautifying, promoting attractiveness or altering the appearance; or
- (ii) Intended for use as a component of any articles enumerated in subparagraph (i) of this paragraph;
- (c) "Drug" means unused merchandise, other than food, that:
 - (i) Is recognized in an official compendium;
 - (ii) Affects the structure or any function of the body of man or other animals; or
 - (iii) Is intended for use as a component of subparagraph (i) or (ii) of this paragraph, but does not include medical devices or their component parts or accessories;
- (d) "Medical device" means unused merchandise that is an instrument, apparatus, implement, machine, contrivance, implant, in vitro reagent or other similar or related article, including any component, part or accessory, and that is:
 - (i) Recognized in an official compendium;
 - (ii) Intended for use in the diagnosis of disease or other conditions, or in the cure, mitigation, treatment or prevention of disease, in man or other animals; or
 - (iii) Intended to affect the structure or function of the body of man or other animals and which does not achieve its principal intended purposes through chemical action within or on the body of man or other animals and which is not dependent upon being metabolized for achievement of its principal intended purposes; and
- (e) "Official compendium" means the official United States pharmacopoeia national formulary or the official homeopathic pharmacopoeia of the United States or any supplement to either of them.

[18-2418, added 2000, ch. 130, sec. 1, p. 306.]

18-2419. RECORDKEEPING REQUIREMENTS -- VIOLATIONS. (1) A vendor of unused merchandise shall maintain receipts for the vendor's purchase of any unused merchandise sold or offered for sale by the vendor at an open market. The receipts shall be kept at the open market in which the unused merchandise is offered for sale and at the vendor's residence or principal place of business for two (2) years after the merchandise is sold. Each receipt shall specify:

- (a) The date of the purchase;
 - (b) The name and address of the person from whom the unused merchandise was acquired;
 - (c) A description of the unused merchandise purchased, including any specific lot numbers or other identifying characteristics;
 - (d) The amount paid for the unused merchandise; and
 - (e) The signature of the buyer and the seller of the unused merchandise.
- (2) It is a violation of the unused merchandise ownership protection act for a person to knowingly:
- (a) Falsify, obliterate or destroy any receipt required to be kept pursuant to this section;
 - (b) At the request of a police officer, fail or refuse to produce any receipt required to be kept pursuant to this section; and
 - (c) Fail to maintain any receipt as required by this section.

[18-2419, added 2000, ch. 130, sec. 1, p. 307.]

18-2420. EXEMPTIONS. (1) The following persons are exempt from the provisions of the unused merchandise ownership protection act:

- (a) A vendor at an event organized or operated for religious, educational, charitable or other nonprofit purposes if no part of any admission fee or parking fee charged vendors or prospective purchasers and no part of the gross receipts or net earnings from the sale of merchandise at the event is paid to a private person for participating in the organization or operation of the event;
- (b) A vendor at an industry or association trade show;
- (c) A vendor at an event at which all of the merchandise offered for sale is new and at which all vendors are manufacturers or authorized representatives of manufacturers or distributors; and
- (d) A vendor selling by sample, catalog or brochure for future delivery.

(2) The requirements of the unused merchandise ownership protection act do not apply to sales or offers for sale of the following unused merchandise:

- (a) Firewood, sand, gravel, flagstone, building stone or other natural product;
- (b) Live animals;
- (c) Vehicles subject to registration pursuant to [title 49](#), Idaho Code;
- (d) Food intended for human consumption at the open market immediately after sale;
- (e) Merchandise offered for sale as an antique or otherwise historical item and, although never used, the style, packaging, material or appearance of which clearly indicates that the merchandise was not produced or manufactured within recent times;
- (f) Food offered for sale that was grown, harvested or produced by the vendor or the vendor's principal; and
- (g) Art, crafts or handicrafts that were produced by the vendor or the vendor's principal.

[18-2420, added 2000, ch. 130, sec. 1, p. 307.]

18-2421. PENALTIES. A person who violates any provision of the unused merchandise ownership protection act is guilty of a misdemeanor for the first offense. Any person who pleads guilty to or is found guilty of a violation of the unused merchandise ownership protection act, or any substantially conforming statute in another state or any local jurisdiction, for a second time within five (5) years, notwithstanding the form of the judgment(s) or withheld judgment(s), is guilty of a felony and shall be sentenced to the custody of the state board of correction for a term not to exceed five (5) years, or shall be fined an amount not to exceed twenty-five thousand dollars (\$25,000) or both.

[18-2421, added 2000, ch. 130, sec. 1, p. 308.]