

TITLE 18  
CRIMES AND PUNISHMENTS

CHAPTER 57  
PUBLIC FUNDS AND SECURITIES

18-5701. MISUSE OF PUBLIC MONEYS BY PUBLIC OFFICERS AND PUBLIC EMPLOYEES. No public officer or public employee shall:

(1) Without authority of law, appropriate public moneys or any portion thereof to his own use, or to the use of another; or

(2) Loan public moneys or any portion thereof; or, having the possession or control of any public moneys, make a profit, directly or indirectly out of public moneys, or use public moneys for any purpose not authorized by law; or

(3) Fail to keep public moneys in his possession until disbursed or paid out by authority of law when legally required to do so; or

(4) Deposit public moneys or any portion thereof in any bank, or with any banker or other person, otherwise than on special deposit, or as otherwise authorized by law; or

(5) Change or convert public moneys or any portion thereof from coin into currency, or from currency into coin or other currency, without authority of law; or

(6) Knowingly keep any false account, or make any false entry or erasure in any account of or relating to public moneys; or fraudulently alter, falsify, conceal, destroy or obliterate any such account; or

(7) Willfully refuse or omit to pay over, on demand, any public moneys in his hands, upon the presentation of a draft, order or warrant drawn upon such public moneys by competent authority; or

(8) Willfully omit to transfer public moneys when such transfer is required by law; or

(9) Willfully omit or refuse to pay over to any public officer, employee or person authorized by law to receive the same, any public moneys received by him under any duty imposed by law so to pay over the same; or

(10) Knowingly use any public moneys, or financial transaction card, financial transaction card account number or credit account issued to or for the benefit of any governmental entity to make any purchase, loan, guarantee or advance of moneys for any personal purpose or for any purpose other than for the use or benefit of the governmental entity.

[18-5701, added 1972, ch. 336, sec. 1, p. 953; am. 2006, ch. 156, sec. 1, p. 471; am. 2008, ch. 56, sec. 1, p. 143.]

18-5702. GRADING AND PUNISHMENT FOR MISUSE OF FUNDS. (1) Any public employee who is not charged with the receipt, safekeeping or disbursement of public moneys and who misuses public moneys in violation of section [18-5701](#), Idaho Code, is guilty of 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, if the amount of public moneys misused is less than three hundred dollars (\$300).

(2) Any public officer or public employee charged with the receipt, safekeeping or disbursement of public moneys, who misuses public moneys in violation of section [18-5701](#), Idaho Code, is guilty of a felony punishable by a fine not exceeding five thousand dollars (\$5,000), or by imprisonment in

the state prison for not more than five (5) years, or by both, if the amount of public moneys misused is less than three hundred dollars (\$300).

(3) Except as otherwise provided in subsections (1) and (2) of this section, any public officer or public employee who misuses public moneys in violation of section [18-5701](#), Idaho Code, is guilty of a felony punishable by a fine not exceeding ten thousand dollars (\$10,000), or by imprisonment in the state prison for not less than one (1) year nor more than fourteen (14) years, or by both.

(4) (a) When any series of violations of section [18-5701](#), Idaho Code, comprised of separate incidents of misuse of public moneys in amounts less than three hundred dollars (\$300) are part of a common scheme or plan, the incidents may be aggregated in one (1) count and the sum of the value of all of the incidents shall be the value considered in determining whether the amount exceeds three hundred dollars (\$300).

(b) Any public officer or public employee who pleads guilty to or is found guilty of a violation of section [18-5701](#), Idaho Code, more than one (1) time, irrespective of the form of the judgment(s) or withheld judgment(s), and who would otherwise be subject to a lesser punishment under subsection (1) or (2) of this section is guilty of a felony punishable as provided in subsection (3) of this section.

(5) In addition to any penalty imposed in this section, any public officer or public employee who pleads guilty to or is found guilty of a violation of section [18-5701](#), Idaho Code, irrespective of the form of the judgment(s) or withheld judgment(s) shall:

(a) Be terminated for cause from the public office or employment subject to any procedures applicable to such termination; and

(b) Make restitution of any public moneys misused, and any profits made therefrom, as ordered by the court; and

(c) Notwithstanding section [18-310](#), Idaho Code, and except as otherwise provided by law, be disqualified from holding any position as a public officer or public employee if such position is charged with the receipt, safekeeping or disbursement of public moneys; and

(d) In the discretion of the court, and unless otherwise prohibited by law, be ordered to apply for distribution of any retirement moneys held by any entity on behalf of the person, in order that such moneys shall be used to make restitution to the public entity or its insurer, unless other funds are otherwise available.

[18-5702, added 1972, ch. 336, sec. 1, p. 954; am. 2008, ch. 56, sec. 2, p. 144; am. 2008, ch. 238, sec. 1, p. 718.]

#### 18-5703. DEFINITIONS. As used in this chapter:

(1) "Financial transaction card" means:

(a) 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 cardholder 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 cardholder 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

(b) Any instrument or device used in providing the cardholder 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.

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

(3) "Governmental entity" means:

(a) The state of Idaho, including all branches, departments, divisions, agencies, boards, commissions and other governmental bodies of the state; and

(b) Counties, cities, districts and all other political subdivisions of the state of Idaho.

(4) "Public employee" means any person who is not a public officer and is employed by a governmental entity.

(5) "Public moneys" includes all bonds and evidences of indebtedness, fees, fines, forfeitures, and all other moneys belonging to or in the charge of a governmental entity or held by a public officer or public employee in his official capacity, and all financial transaction cards, financial transaction card account numbers and credit accounts issued to or for the benefit of the governmental entity.

(6) "Public officer" means any person holding public office of a governmental entity:

(a) As an elected official, by virtue of an election process, including persons appointed to a vacant elected office; or

(b) As an appointed official by virtue of a formal appointment as required by law.

[18-5703, added 1972, ch. 336, sec. 1, p. 954; am. 2006, ch. 156, sec. 2, p. 472; am. 2008, ch. 56, sec. 3, p. 145.]