

9 GCA CRIMES AND CORRECTIONS
CH. 46 FORGERY, FRAUDULENT PRACTICES & TELEPHONE RECORDS

CHAPTER 46
FORGERY, FRAUDULENT PRACTICES & TELEPHONE RECORDS

- Article 1. Forgery and Fraudulent Practices.
- Article 2. Telephone Records; Obtaining, Selling, or Receiving Without Consent.
- Article 3. Mortgage Fraud.

ARTICLE 1
FORGERY AND FRAUDULENT PRACTICES

- § 46.10. Forgery; Defined & Punished.
- § 46.15. Criminal Simulation; Defined & Punished.
- § 46.20. Tampering with Recordable Documents; Defined & Punished.
- § 46.25. Tampering with Records to Deceive or Conceal; Defined & Punished.
- § 46.30. Bad Checks, Defined & Punished.
- § 46.35. Fraudulent Use of Credit Cards; Defined & Punished.
- § 46.40. Deceptive Business Practices; Defined & Punished.
- § 46.45. Bribery for Violation of Duty; Defined & Punished.
- § 46.50. Rigging of Public Exhibitions; Defined; Failure to Report; Soliciting Punishment.
- § 46.55. Defrauding Creditors; Defined & Punished.
- § 46.60. Fraud in Insolvency; Defined & Punished.
- § 46.65. Receiving Deposits in Failing Bank; Defined & Punished.
- § 46.70. Misapplication of Entrusted Funds; Defined & Punished.
- § 46.75. Procuring Execution of Financially Significant Instruments by Fraud, Defined & Punished.
- § 46.80. Impersonation; Identity Theft; Defined & Punished.

§ 46.10. Forgery; Defined & Punished.

(a) A person is guilty of forgery if, with intent to defraud or injure anyone, or with knowledge that he is facilitating a fraud or injury to be perpetrated by anyone, he:

(1) falsely makes a written instrument by drawing a complete written instrument in its entirety, or an incomplete written instrument, which purports to be an authentic creation of its ostensible maker, but which is not either because the ostensible maker is fictitious or because, if real, he did not authorize the making or drawing thereof;

9 GCA CRIMES AND CORRECTIONS
CH. 46 FORGERY, FRAUDULENT PRACTICES & TELEPHONE RECORDS

(2) falsely completes a written instrument by transforming through adding, inserting or changing matter, an incomplete written instrument into a complete one, without the authority of anyone entitled to grant it, so that the complete written instrument falsely appears or purports to be in all respects an authentic creation of its ostensible maker or authorized by him;

(3) falsely alters a written instrument by change, without authorization by anyone entitled to grant it, of a written instrument, whether complete or incomplete, by means of erasure, obliteration, deletion, insertion of new matter, transposition of matter, or in any other manner, so that the instrument so altered appears or purports to be in all respects an authentic creation of its ostensible maker or authorized by him;

(4) induces another by deception to sign or execute a written instrument which is not what it has been represented to be; or

(5) utters any written instrument which he knows to be forged in a manner specified in Paragraphs (1), (2), (3) or (4).

(b) Written Instrument includes printing or any other method of recording information, money, coins, tokens, tickets, stamps, seals, credit cards, badges, trademarks and other symbols of value, right, privilege or identification.

(c) Forgery is a felony of the second degree if the writing is or purports to be part of an issue of money, stamps, securities or other valuable instruments issued by a government or governmental agency, or part of an issue of stock, bonds or other instruments representing interests or claims against a corporate or other organization or its property. Forgery is a felony of the third degree if the writing is or purports to be a will, deed, contract, release, commercial instrument or other document evidencing, creating, transferring, altering, terminating or otherwise affecting legal relations. Otherwise forgery is a misdemeanor.

SOURCE: G.P.C. §§ 115-116, 350, 352, 353, 470-473, 475, 476, 477-483; See also § 474; M.P.C. § 224.1; Cal. §§ 1030-1040 (1971) see also § 1176; Mass. ch. 266, §§ 26-29; N.J. § 2C:21-1.

COMMENT: Former Penal Code §§ 479 and 480 included specific provisions on possession of a forgery with intent to utter and the manufacture or possession of dies or other means of committing forgery. This Code relies on attempt law to cover such crimes.

9 GCA CRIMES AND CORRECTIONS
CH. 46 FORGERY, FRAUDULENT PRACTICES & TELEPHONE RECORDS

§ 46.10 provides for forgery and counterfeiting in a manner consistent with former law, while eliminating considerable verbiage and overlapping statutes. The Law relating to theft, fraud, attempt and complicity tend to diminish the need for a separate forgery offense. However, the offense is retained as it was in the Model Code "because the concept is so embedded in statutes and popular understandings that it could be inconvenient as unlikely that any legislation would completely abandon it, and partly in recognition of the special effectiveness of forgery as the means of undermining public confidence in important symbols of commerce, and perpetrating large scale frauds." M.P.C. §§ 79-80 (tent. draft No. 11, 1960).

NOTE: The comma which formerly appeared between the words "commercial" and "instrument" in § 46.10 (c) has been removed, as this was a typographical error. [Memo of Charles H. Troutman, Compiler of Laws, June 29, 1987.]

§ 46.15. Criminal Simulation; Defined & Punished.

A person commits a misdemeanor if, with intent to defraud anyone or with knowledge that he is facilitating a fraud to be perpetrated by anyone, he makes, alters or utters any object so that it appears to have value because of antiquity, rarity, source or authorship which it does not possess.

SOURCE: *M.P.C. § 224.2; Mass. ch. 266, § 33; N.J. § 2C:21-2.

CROSS-REFERENCES: § 46.40 deceptive business practices; § 43.35 -attempted theft by deception; § 13.10 - attempt.

COMMENT: This Section is substantively the same as Model Penal Code § 224.2. It is related to § 46.40, but covers person not acting "in the course of business." It overlaps to some extent § 43.35 insofar as the punishes conduct which could be punished as an attempted theft by deception. Nevertheless, it is believed to be useful for its greater specificity.

§ 46.20. Tampering With Recordable Documents; Defined & Punished.

A person commits a felony of the third degree if, with intent to deceive or injure anyone, he destroys, removes or conceals any will, deed, mortgage, security instrument or other writing for which the law provides public recording.

SOURCE: G.P.C. § 617; *M.P.C. § 224.3; See Cal. § 1146, 1170 (1971); Mass. ch. 266, § 38; N.J. § 2C:21-3.

CROSS-REFERENCES: § 46.26 - Lessor included offense; § 43.35 -Theft by deception.

COMMENT: Section 46.25 completely overlaps § 46.20 and thus provides a lesser included offense to the one provided by the latter Section. The purpose of including both Sections is that § 46.20 provides a more severe penalty which may be appropriate where instruments of great importance, such as wills and deeds, are destroyed, removed or concealed. It might be noted that, although § 46.25 provides only for misdemeanor penalties, the conduct envisaged here may also constitute an attempt of a more serious offense and may be punished accordingly.

§ 46.25. Tampering With Records to Deceive or Conceal; Defined & Punished.

A person commits a misdemeanor if, knowing that he has no privilege to do so, he falsifies, destroys, removes or conceals any writing or record, with intent to deceive or injure anyone or to conceal any wrongdoing.

SOURCE: G.P.C. §§ 115a, 471, 563, 563a, 554, 617, 620; See also §§ 113, 114, 115; *M.P.C. § 224.4 See Cal. Section 11, 1174 (1971); Mass. ch. 266, § 31; N.J. § 2C:21-4.

CROSS-REFERENCES: See Comment to § 46.20.

§ 46.30. Issuance of Dishonored Checks.

(a) Definitions. For the purpose of this section, the following terms have the meanings given them.

(1) *Check* means a check, draft, order of withdrawal, or similar negotiable or nonnegotiable instrument.

(2) *Credit* means an arrangement or understanding with the drawee for the payment of a check.

(b) Acts constituting. Whoever issues a check which, at the time of issuance, the issuer intends shall not be paid, is guilty of issuing a dishonored check and may be sentenced as provided in subsection (b)(i). In addition, restitution may be ordered by the court.

(i) Penalties. A person who is convicted of issuing a dishonored check under subsection (b) is:

(1) guilty of a petty misdemeanor punishable by imprisonment for not more than sixty (60) days or by payment of a fine of not more than \$500, or both, if the value of the dishonored check, or checks aggregated under paragraph (ii), is not more than \$250; or

(2) guilty of a misdemeanor punishable by imprisonment for not more than one (1) year, or by payment of a fine of not more than \$2,000, or both, if the value of the dishonored check, or checks aggregated under paragraph (ii), is more than \$250, but not more than \$1000; or

(3) guilty of a felony punishable by imprisonment for not more than five (5) years, or by payment of a fine of not more than \$5,000, or both, if the value of the dishonored check, or checks aggregated under paragraph (ii), is more than \$1,000.

9 GCA CRIMES AND CORRECTIONS
CH. 46 FORGERY, FRAUDULENT PRACTICES & TELEPHONE RECORDS

(ii) In a prosecution under this paragraph, the value of dishonored checks issued by the defendant in violation of this subsection within any six-month period may be aggregated and the defendant charged accordingly in applying this section.

(c) Proof of intent. Any of the following is evidence sufficient to sustain a finding that the person at the time the person issued the check intended it should not be paid:

(1) proof that, at the time of issuance, the issuer did not have an account with the drawee;

(2) proof that, at the time of issuance, the issuer did not have sufficient funds or credit with the drawee and that the issuer failed to pay the check within thirty (30) days after mailing of notice of nonpayment or dishonor as provided in this subsection; or

(3) proof that, when presentment was made within a reasonable time, the issuer did not have sufficient funds or credit with the drawee and that the issuer failed to pay the check within thirty (30) days after mailing of notice of nonpayment or dishonor as provided in this subsection.

Notice of nonpayment or dishonor that includes a citation to this section shall be sent by the payee or holder of the check to the maker or drawer by certified mail, return receipt requested, or by regular mail, supported by an affidavit of service by mailing, to the address printed on the check. Refusal by the maker or drawer of the check to accept certified mail notice or failure to claim certified or regular mail notice is not a defense that notice was not received.

The notice may state that unless the check is paid in full within thirty (30) days after mailing of the notice of nonpayment or dishonor, the payee or holder of the check will or may refer the matter to proper authorities for prosecution under this section.

An affidavit of service by mailing shall be retained by the payee or holder of the check.

(d) Proof of lack of funds or credit. If the check has been protested, the notice of protest is admissible as proof of presentation, nonpayment, and protest, and is evidence sufficient to sustain a finding that there was a lack of funds or credit with the drawee.

9 GCA CRIMES AND CORRECTIONS
CH. 46 FORGERY, FRAUDULENT PRACTICES & TELEPHONE RECORDS

(e) Exceptions. This section does not apply to a postdated check or to a check given for a past consideration, except a payroll check or a check issued to a fund for employee benefits.

SOURCE: G.P.C. § 476(a); *M.P.C. § 224.5; Cal. § 1042 (1971); Mass. ch. 266, § 23; N.J. § 2C:21-5. Repealed and reenacted by P.L. 23-84;2.

CROSS-REFERENCES: § 43.15 - Theft § 43.20 -Classification of Theft.

COMMENT: Section 476(a) of the Penal Code is superseded by this Section. Section 46.30 eliminates the requirement under the Penal Code that check be drawn "with intent to defraud." This requirement has been used by some of the courts of Guam to essentially eliminate the crime of issuing bad checks as, in most cases, a specific intent to defraud is very difficult to prove. This Section should remedy that problem. On the other hand, the offense here has been classified as a petty misdemeanor. Further, defenses are presented in this Section which will make this Section more difficult to be used by merchants as a means of collecting money.

Note, however, that where a back check is issued as part of an attempted or committed theft, the defendant may be prosecuted for the more serious offense.

§ 46.35. Fraudulent Use of Credit Cards; Defined & Punished.

(a) A person commits an offense if he uses a credit card with the intent of obtaining property or services with knowledge that:

- (1) the card is stolen or forged;
- (2) the card has been revoked or cancelled; or
- (3) for any other reason his use of the card is unauthorized.

(b) It is an affirmative defense to prosecution under Paragraph (3) of Subsection (a) if the defendant proves by a preponderance of the evidence that he had the ability and intended to meet all obligations to the issuer arising out of his use of the card.

(c) Credit card means a writing purporting to evidence an undertaking to pay for property or services delivered or rendered to or upon the order of a designated person or bearer.

(d) An offense under this Section is a felony of the third degree if the value of the property or services secured or sought to be secured by means of the credit card exceeds \$500; otherwise it is a misdemeanor.

SOURCE: *M.P.C. § 224.6; cf Cal. § 1040 (1971); Mass. ch. 266, § 24; N.J. § 2C:21-6.

CROSS-REFERENCES: See Sections 43.35 & 43.55 - Theft by deception. *People v. Von Hecht*, 133 Cal. App. 2d, 25, 383, Pac. 2nd 764 (1955).

9 GCA CRIMES AND CORRECTIONS

CH. 46 FORGERY, FRAUDULENT PRACTICES & TELEPHONE RECORDS

COMMENT: This is a new Section having no parallel in former law. This Section recognizes a new element (relatively speaking, in comparison with the age of the Guam Penal Code) in Commerce, that of the credit card.

Chapter 43 of this Code does not reach the issue of use of another's credit card. The merchant who is deceived by the defendant using someone else's credit card does not lose thereby. He is paid by the credit company. The owner who is deceived by the defendant using the credit card is usually limited to a loss of fifty dollars. It is the credit card company, a third party to the transaction, who suffers the loss. Thus, the need for this Section.

§ 46.40. Deceptive Business Practices; Defined & Punished.

(a) A person commits a misdemeanor if in this course of business he:

(1) uses or possesses for a false weight or measure, or any other device for falsely determining or recording any quality or quantity;

(2) sells, offers or exposes for sale, or delivers less than the represented quantity of any commodity or service;

(3) takes or attempts to take more than the represented quantity of any commodity or service when as buyer he furnishes the weight or measure;

(4) sells, offers or exposes for sale adulterated or mislabeled commodities. "Adulterated" means varying from the standard of composition or quality prescribed by or pursuant to any statute providing criminal penalties for such variance or lawfully promulgated administrative regulation, or, if none, as set by established commercial usage. "Mislabeled" means varying from the standard of truth or disclosure in labeling prescribed by or pursuant to any statute providing criminal penalties for such variance or lawfully promulgated administrative regulations or, if none, as set by established commercial usage;

(5) makes a false or misleading statement in any advertisement addressed to the public or to a substantial segment thereof with the intent of promoting the purchase or sale of property or services;

(6) makes a false or misleading written statement with the intent of obtaining property or credit; or

(7) makes a false or misleading written statement with the intent of promoting the sale of securities, or omits information required by law to be disclosed in written documents relating to securities.

9 GCA CRIMES AND CORRECTIONS
CH. 46 FORGERY, FRAUDULENT PRACTICES & TELEPHONE RECORDS

(b) It is an affirmative defense to prosecution under Subsection (a) if the defendant proves by a preponderance of the evidence that his conduct was not knowingly or recklessly deceptive.

SOURCE: G.P.C. §§ 350-351a, 364, 354a, 380-383a, 395, 402a, 564, 577-580; *M.P.C. § 224.7; Mass. ch. 266, § 32; N.J. § 2C:21-7.

CROSS-REFERENCES: See § 47210, Govt. Code - Full weight or measure required - a misdemeanor See §§ 53610 - 53616 - Trade practices and consumer protection - Civil remedies and penalties.

COMMENT: Section 46.40 consolidate a number of unrelated statutes dealing with deceptive practices and does not touch the Government Code in this respect, but adds to it.

The terms adulterated and mislabeled should be defined some way. The Commission simply incorporated definitions based on those in the Model Penal Code and supplemented these with specific guidelines furnished by the Penal Code § 383. The Commission has no idea where the latter came from originally or whether they are adequate.

§ 46.45. Bribery for Violation of Duty; Defined & Punished.

(a) A person commits a misdemeanor if he solicits, accepts or agrees to accept any benefit as consideration for knowingly violating or agreeing to violate a duty or fidelity to which he is subject as:

- (1) agent or employee of another;
- (2) trustee, guardian, or other fiduciary;
- (3) lawyer, physician, accountant, appraiser, or other professional adviser or informant;
- (4) officer, director, partner, manager or other participant in the direction of the affairs of an incorporated or unincorporated association; or
- (5) arbitrator or other purportedly disinterested adjudicator or referee.

(b) A person who holds himself out to the public as being engaged in the business of making disinterested selection, appraisal, or criticism of commodities or services commits a misdemeanor if he solicits, accepts or agrees to accept any benefit to influence his selection, appraisal or criticism.

(c) A person commits a misdemeanor if he confers, or offers or agrees to confer, any benefit the acceptance of which would be criminal under this Section.

9 GCA CRIMES AND CORRECTIONS

CH. 46 FORGERY, FRAUDULENT PRACTICES & TELEPHONE RECORDS

SOURCE: G.P.C. § 653(c); cf. § 641; *M.P.C. § 224.8; Cal. §§ 1480-148(1971); Mass. ch. 266, §§ 34-35; N.J. § 2C:21-10.

COMMENT: Section 46.45 is generally new, but follows Model Penal Code § 224.8. This Section makes a misdemeanor what is commonly known as “commercial bribery” and “commercial influence peddling”. Governmental bribery and governmental influence peddling are covered by Chapter 49.

In principal, all relations which are recognized in society as involving special concern should be kept secure from the corrupting influence of bribery. For example, a lawyer, physician or appraiser who accepts a bribe to betray the confidence of his client or impartiality of his opinion should be subject to prosecution.

§ 46.50. Rigging of Public Exhibitions; Defined; Failure to Report; Soliciting Punishment.

(a) A person commits a misdemeanor if, with intent to prevent a publicly exhibited contest from being conducted in accordance with the rules and usages purporting to govern it, he:

(1) confers or offers or agrees to confer any benefit upon, or threatens any injury to a participant, official or other person associated with the contest or exhibition; or

(2) tampers with any person, animal or thing.

(b) A person commits a misdemeanor if he knowingly solicits, accepts or agrees to accept any benefit the giving of which would be criminal under Subsection (a).

A person commits a petty misdemeanor if he fails to report, with reasonable promptness, a solicitation to accept any benefit or to do any tampering, the giving or doing of which would be criminal under Subsection (a).

SOURCE: *M.P.C. § 224.9; Cal. §§ 1500-1525 (1971); Mass. ch. 266, § 34(d) (3); 35(d) (e); N.J. § 2C:21-11.

COMMENT: A new Section. This Section is provided not in repose to an apparent need, but for its prophylactic effect. However, this Section would deal directly with cases of dog-doping at the Greyhound Track.

§ 46.55. Defrauding Creditors; Defined & Punished.

(a) A person commits an offense, he:

(1) destroys, removes, conceals, encumbers, transfers or otherwise deals with property subject to a security interest with intent to defeat enforcement of that security interest;

9 GCA CRIMES AND CORRECTIONS
CH. 46 FORGERY, FRAUDULENT PRACTICES & TELEPHONE RECORDS

(2) sells, assigns, exchanges, secretes, injures, destroys or otherwise disposes of any property upon which he has previously executed a mortgage or any instrument that operates as such, with intent to defraud the mortgages or a purchaser thereof;

(3) secretes, removes, assigns, conveys or otherwise disposes of his property with intent to defraud a judgment creditor or to prevent that property from being made liable for the payment of his debts;

(4) with intent to defraud, buys, receives, conceals or aids in concealing personal property, knowing it or any interest therein to be hired, leased or held as collateral security; or

(5) Intentionally sells, mortgages, conveys, conceals or aids in concealing personal property received by him upon a written conditional sale or lease agreement, or any other written agreement by which it or any interest therein is held as collateral security, before performance of any conditions precedent to acquiring the title thereto (A) without the consent in writing of the conditional seller, lessor or other holder of the security interest or (B) without disclosure to any buyer or transferee of the existence and terms of the conditional sale, lease or security agreement.

(b) An offense under this Section is a felony of the third degree if the value of the property which is the subject of the offense exceeds Ten Thousand Dollars in value. Otherwise the offense is a misdemeanor.

SOURCE: G.P.C. §§ 154, 155, 502a, 502b, 504a, 531; See also § 581; M.P.C. § 224.10; *Mass. ch. 266, § 36; N.J. § 2C:21-12.

CROSS-REFERENCES: §§ 43.10 (3) - Property of another defined; 42.30 - Theft by unlawful disposition; § 4.60 - Aiding & Abetting; § 4.65 - Criminal Facilitation.

COMMENT: Section 46.55 supersedes Penal Code §§ 154, 155, 502a, and 502b. This Section is necessary because the statutes dealing with theft are framed in terms of property of another, the term being defined to exclude the subject matter of this Section. Section 46.55 deviates from the Model Penal Code by upgrading the offense to a third degree felony where the property which is the subject of the offense exceeds \$10,000 in value.

Section 46.55 also includes within its scope the buyer and receiver of the property if he has acted with the requisite intent to defraud.

§ 46.60. Fraud in Insolvency; Defined & Punished.

(a) A person commits a misdemeanor, if, with intent to defraud a creditor and with knowledge either that proceedings have been or are about to be instituted for the appointment of an administrator or that a

9 GCA CRIMES AND CORRECTIONS
CH. 46 FORGERY, FRAUDULENT PRACTICES & TELEPHONE RECORDS

composition agreement or other arrangement for the benefit of creditors has been or is about to be made, he:

- (1) conveys, transfers, removes, conceals, destroys encumbers or otherwise disposes of any part of or any interest in the debtor's estate;
- (2) obtains any substantial part of or interest in the debtor's estate;
- (3) presents to any creditor or to the administrator any writing or record relating to the debtor's estate or to a creditor's claim, knowing the writing or record to contain a false material statement;
- (4) fails or refuses to disclose any information that he is required by law to furnish to the administrator regarding the existence, amount or location of any part of or any interest in the debtor's estate; or
- (5) misrepresents any information furnished to the administrator regarding the existence, amount or location of any part of or any interest in the debtor's estate.

(b) As used in this Section, "administrator" means an assignee or trustee for the benefit of creditors, a conservator, a receiver or any other person entitled to administer property for the benefit of creditors.

SOURCE: M.P.C. § 224.11; *Mass. ch. 266, § 37;N.J. § 2C:21-13.

CROSS-REFERENCES: § 46.55 - Complemented.

COMMENT: A new Section. This Section is narrowly drawn in that the defendant must have an intent to defraud a creditor, although not necessarily his own, and must know of the actual or impending appointing of an administrator in an insolvency proceeding, or that a composition or other arrangement for the benefit of creditors has been or is about to be made.

Considering the large number of bankruptcies and insolvencies which have been occurring on Guam, this Section could be of some use.

§ 46.65. Receiving Deposits in Failing Bank; Defined & Punished.

(a) As used in this Section, financial institution means a bank, insurance company, credit union, building and loan association, investment trust or other organization held out to the public as a place of deposit of funds or medium of savings or collective investment.

(b) An officer, manager or other person directing or participating in the direction of a financial institution commits a misdemeanor if he receives or permits the receipt of a deposit, premium payment or other investment in the institution knowing that:

9 GCA CRIMES AND CORRECTIONS
CH. 46 FORGERY, FRAUDULENT PRACTICES & TELEPHONE RECORDS

(1) due to financial difficulties the institution is about to suspend operations or go into receivership or reorganization; and

(2) the person making the deposit or other payment is unaware of the precarious situation of the institution.

SOURCE: G.P.C. § 562; *M.P.C. §§ 223.0(2), 22412; N.J. § 2C:21-14.

CROSS-REFERENCES: §§ 30802, Govt. Code (As amended by § 197, P.L. 13-187) "Banking Code".

COMMENT: This Section parallels precisely similar provisions in the Banking Code, except that this Section omits any special penalty or fraudulent intent. Further, § 30810 has been amended to make this crime a felony where the value of the deposit exceeds \$1,000. Since the amending legislation, P.L. 13-187 is intended as a companion to this Criminal and Correctional Code, it is obvious that neither Section supersedes to the other.

§ 46.70. Misapplication of Entrusted Funds; Defined & Punished.

(a) A person commits an offense if he applies or disposes of property that has been entrusted to him as a fiduciary, or property of the government or of a financial institution, in a manner which he knows is unlawful and involves substantial risk of loss or detriment to the owner of the property or to a person for whose benefit the property was entrusted.

(b) The offense is a misdemeanor if the amount involved exceeds \$50; otherwise it is a petty misdemeanor.

(c) Fiduciary includes trustee, guardian, executor, administrator, receiver and any person carrying on fiduciary functions on behalf of a corporation or other organization which is a fiduciary.

(d) Financial institution has the meaning provided in Subsection (a) of § 46.65.

SOURCE: See Guam §§ 74a, 425-427, 561a, 561d; *M.P.C. § 224.13; N.J. § 2C:21-15.

CROSS-REFERENCES: See § 43.15 - Theft.

COMMENT: Section 46.70 provides an alternative to prosecution for theft where a fiduciary or person entrusted with government property or property of a financial institution, misapplies rather than misappropriates property entrusted to him. This Section satisfies the legitimate demand for a sanction deterring a person from wrongfully dealing with government property even though the conduct may involve no gain for himself or both public and private properties, but requires disposition in the manner which the defendant knows is unlawful.

§ 46.75. Procuring Execution of Financially Significant Instruments by Fraud, Defined & Punished.

A person commits a misdemeanor or if by deception he causes another to execute any instrument affecting or likely to affect the pecuniary interest of any person.

SOURCE: *M.P.C. § 224.14; N.J. 2C:2-116.

CROSS-REFERENCES: § 52.30 - Unsworn Falsification; § 55.25 - False report to law enforcement authorities; See § 4.60 - Inducing a person to commit an offense; § 4.65 -Criminal Facilitation.

COMMENT: This Section is limited to documents of pecuniary significance and is identical to Model Penal Code § 224.14. It clearly reaches such cases as execution of releases or extensions of time for payment of obligations. Excluded, however, are such documents as written statements given to police officers.

§ 46.80. Impersonation; Identity Theft; Defined & Punished.

(a) A person commits an offense when that person:

(1) impersonates another or assumes a false identity and does an act in such assumed character or false identity to obtain a benefit for oneself or another, or to injure or defraud another;

(2) pretends to be a representative of some person or organization and does an act in such pretended capacity with intent to obtain a benefit for oneself or for another, or to injure or defraud another;

(3) impersonates another, assumes a false identity or makes a false or misleading statement regarding the identity of any person, in an oral or written application for services, for the purpose of obtaining services;

(4) possesses or obtains any personal identifying information pertaining to another person, without the authorization of that person, and uses or attempts to use that information, or assists another person in using the information, for any unlawful purpose, including to:

(i) fraudulently obtain, or attempt to obtain, money, credit, goods, services, anything of value, or medical information in the name of another person;

(ii) injure or defraud, or attempt to injure or defraud, another person;

(iii) avoid, or attempt to avoid, the payment of debt or other legal obligation; *or*

9 GCA CRIMES AND CORRECTIONS
CH. 46 FORGERY, FRAUDULENT PRACTICES & TELEPHONE RECORDS

(iv) avoid, or attempt to avoid, prosecution for a crime in the name of the other person without the consent of that person.

(b) As used in this Section, *personal identifying information* means the name, address, telephone number, driver's license or driver's license number, social security card or social security number, passport or passport number, official government of Guam or other state identification card or number, mother's maiden name, demand deposit account number, savings account number, credit card or credit card number, or a debit card or debit card number, or any name or number that may be used, alone or in conjunction with any other information, to assume the identity of a person. The list in this Subsection is *not* exhaustive.

(c) An offense under this Section is a felony of the second degree *if* the benefit obtained, or the injury or fraud perpetrated on another, or the payment sought to be avoided, *if any*, is at least Five Thousand Dollars (\$5,000.00); otherwise, it is a felony of the third degree.

(d) A person found guilty of violating any provisions of this Section shall, in addition to any other punishment, be ordered to make restitution for financial loss sustained by a victim as a result of such violation. Financial loss may include any costs incurred by such victim in correcting the credit history of such victim, or any costs incurred in connection with any civil or administrative proceeding to satisfy any debt or other obligation of such victim, including lost wages and attorney's fees.

(e) In any case in which a person obtains personal identifying information of another person without the authorization of that person, and uses that information to commit a crime in addition to a violation of Subsection (a), and is convicted of that crime, the court records shall reflect that the person whose identity was falsely used to commit the crime did *not* commit the crime.

SOURCE: Cf. Guam §§ 442, 528, 529, 538; *Mass. ch. 266, § 30; N.J. 2C:21-17. Repealed/reenacted by P.L. 25-101:3 (2000).

CROSS-REFERENCES: § 55.30 - Impersonation of public officer; § 43.35 - Attempted theft by deception.

COMMENT: [1977] Section 46.80 provides generally for private impersonation. This Section is intended to be relatively innocuous offense. Of course, nothing in this Section precludes prosecution for an attempt of a more serious offense where the circumstances warrant.

ARTICLE 2
TELEPHONE RECORDS; OBTAINING, SELLING, OR
RECEIVING WITHOUT CONSENT

SOURCE: This Article was added by P.L. 29-141:1 (Jan. 30, 2009), as §§ 46201-46205. Renumbered by Compiler to harmoniously fit this Chapter.

- § 46.90. Definitions.
- § 46.91. Prohibition on Use of Telephone Records.
- § 46.92. Penalties:
- § 46.93. Additional Penalties.
- § 46.94. Exceptions.

§ 46.90. Definitions.

As used in this Section:

(a) *Caller Identification Record* means a record that is delivered electronically to the recipient of a telephone call simultaneously with the reception of the telephone call and that indicates the telephone number from which the telephone call was initiated *or* similar information regarding the telephone call.

(b) *Customer* means a person who subscribes to telephone service.

(c) *Telephone Record* means a record in written, electronic *or* oral form, *except* a caller identification record and subscriber list information that is created by a telephone service provider and that contains any of the following information with respect to a customer:

- (1) Telephone numbers that have been dialed by the customer.
- (2) Telephone numbers pertaining to calls made to the customer.
- (3) The time when calls were made by the customer *or* to the customer.
- (4) The duration of calls made by the customer *or* to the customer.
- (5) The location(s) from which calls were initiated by the customer *or* received from the customer.

9 GCA CRIMES AND CORRECTIONS
CH. 46 FORGERY, FRAUDULENT PRACTICES & TELEPHONE RECORDS

(d) *Telephone Service* means the conveyance of two (2)-way voice communication in analog, digital *or* other form by any medium, including wire, cable, fiber optics, cellular, broadband personal communications services *or* other wireless technologies, satellite, microwave *or* at any frequency over any part of the electromagnetic spectrum. Telephone service includes the conveyance of voice communication over the Internet and telephone relay service.

(e) *Telephone Service Provider* means a person who provides telephone service to a customer.

§ 46.91. Prohibition on Use of Telephone Records.

No person may do any of the following:

(a) Obtain, attempt to obtain *or* conspire with another to obtain a telephone record that pertains to a customer who is a resident of Guam, without the customer's consent by doing any of the following:

(1) Making a false *or* deceptive statement to an employee, representative *or* agent of a telephone service provider.

(2) Making a false *or* deceptive statement to a customer of a telephone service provider.

(3) Accessing such customer's telephone record via the Internet.

(4) Knowingly providing to a telephone service provider a document that is fraudulent, that has been lost *or* stolen *or* that has been obtained by fraud *or* contains a false, fictitious *or* fraudulent statement *or* representation.

(b) Ask another person to obtain a telephone record knowing that the person will obtain the telephone record in a manner prohibited under this Section.

(c) Sell *or* offer to sell a telephone record obtained in a manner prohibited under this Section.

§ 46.92. Penalties:

(a) A person who violates this Section is guilty of a third degree felony, a fine *not to exceed* Ten Thousand Dollars (\$10,000) *or* imprisonment *not to exceed* three (3) years *or* both, *if* the violation involves one (1) telephone record.

9 GCA CRIMES AND CORRECTIONS
CH. 46 FORGERY, FRAUDULENT PRACTICES & TELEPHONE RECORDS

(b) A person who violates this Section is guilty of a second degree felony, a fine *not to exceed* Twenty-five Thousand Dollars (\$25,000) *or* imprisonment *not to exceed* ten (10) years *or* both, *if* the violation involves two (2) *or* more telephone records.

(c) A person who violates this Section is guilty of a third degree felony, a fine *not to exceed* Fifty Thousand Dollars (\$50,000) *or* imprisonment *not to exceed* fifteen (15) years *or* both, *if* the violation involves *more than* ten (10) telephone records.

§ 46.93. Additional Penalties.

(a) In addition to the penalties authorized under §46.92, a person who violates this Section may be required to forfeit personal property used *or* intended to be used in the violation.

(b) In an action to enforce this Section, the court *shall* award to a person who is the subject of a telephone record involved in a violation of this Section all of the following:

(1) The amount of the person's pecuniary loss suffered because of a violation of this Section, *if* proof of the loss is submitted to the satisfaction of the court *or* One Thousand Dollars (\$1,000), whichever is greater.

(2) The amount of any gain to the violator as a result of the violation.

§ 46.94. Exceptions.

This Section does *not* apply to any of the following:

(a) Action by a law enforcement agency in connection with the official duties of the law enforcement agency.

(b) A disclosure by a telephone service provider, *if* any, of the following applies:

(1) The telephone service provider reasonably believes the disclosure is necessary to do any of the following:

(A) Provide telephone service to a customer.

(B) Protect an individual *or* the telephone service provider from fraudulent, abusive *or* unlawful use of telephone service *or* a telephone record.

9 GCA CRIMES AND CORRECTIONS
CH. 46 FORGERY, FRAUDULENT PRACTICES & TELEPHONE RECORDS

(2) The disclosure is made to the National Center for Missing and Exploited Children.

(3) The disclosure is authorized by Guam *or* federal law *or* regulation.

(4) The disclosure is related to testing the security procedures *or* systems of the telephone service provider for maintaining the confidentiality of customer information.

(5) The disclosure is to a government entity, *if* the telephone company provider reasonably believes that an emergency involving immediate danger of death *or* serious physical injury to any person justifies disclosure of the information.

(6) The disclosure is in connection with the sale *or* transfer of all *or* part of its business *or* the purchase *or* acquisition of a portion *or* all of a business *or* the migration of a customer from one (1) carrier to another.

(c) A disclosure pursuant to § 46.94 (b), *if* such disclosure is made reasonably and in good faith, notwithstanding any later determination that such action was *not* in fact authorized.

ARTICLE 3
MORTGAGE FRAUD

SOURCE: Article 3 added by P.L. 30-044:1 (July 14, 2009).

- § 46.100. Title.
- § 46.101. Definitions.
- § 46.102. Mortgage Fraud.
- § 46.103. Classification of Offense.
- § 46.104. Mortgage Fraud Prosecutor and Investigators.

§46.100. Title.

This Act may be cited as the Mortgage Fraud Act.

§46.101. Definitions.

As used in this Act:

9 GCA CRIMES AND CORRECTIONS
CH. 46 FORGERY, FRAUDULENT PRACTICES & TELEPHONE RECORDS

(a) *Mortgage lending process* means the process through which a person seeks *or* obtains a mortgage loan, including solicitation, application, *or* origination, negotiation of terms, third-party provider services, underwriting, signing and closing, and funding of the loan.

(b) *Mortgage loan*:

(1) means a loan *or* agreement made to extend credit to a person when the loan is secured by a deed, security deed, mortgage, security interest, deed of trust, *or* other document representing a security interest *or* lien upon any interest in one (1)-to-four (4) family residential property;

(2) includes the renewal *or* refinancing of any loan; and

(3) includes home equity loans.

(c) *Unlawful activity* means to directly engage in conduct *or* to solicit, request, command, encourage, *or* intentionally aid another person to engage in conduct which would constitute any offense described by the following crimes *or* categories of crimes, *or* to attempt *or* conspire to engage in an act which would constitute any of those offenses, regardless of whether the act is in fact charged *or* indicted by any authority *or* is classified as a misdemeanor *or* a felony

(d) *Pattern of unlawful activity* means engaging in conduct which constitute the commission of at least three (3) episodes of unlawful activity, which episodes are *not* isolated, but have the same *or* similar purposes, results, participants, victims, *or* methods of commission, *or* otherwise are interrelated by distinguishing characteristics. Taken together, the episodes *shall* demonstrate continuing unlawful conduct and be related either to each other *or* to the enterprise. The most recent act constituting part of a pattern of unlawful activity as defined by this part *shall* have occurred within five (5) years of the commission of the next preceding act alleged as part of the pattern.

(e) *Sensitive personal identifying information* means any of the following information regarding an individual's:

(1) Social Security number;

(2) driver license number *or* other government issued identification number;

9 GCA CRIMES AND CORRECTIONS

CH. 46 FORGERY, FRAUDULENT PRACTICES & TELEPHONE RECORDS

(3) financial account number *or* credit *or* debit card number;

(4) password *or* personal identification number *or* other identification required to gain access to a financial account *or* a secure website;

(5) automated *or* electronic signature;

(6) unique biometric data; and

(7) any other information that can be used to gain access to an individual's financial accounts *or* to obtain goods *or* services.

(f) *Value* means the value of the property, money, *or* thing obtained *or* sought to be obtained.

(g) *Person* includes any individual *or* entity capable of holding a legal *or* beneficial interest in property, including governmental entities.

(h) *Obtain* means to come into possession of, get, acquire *or* procure.

§46.102. Mortgage Fraud.

(a) A person commits the offense of mortgage fraud *if* the person *does* any of the following with the intent to defraud:

(1) knowingly makes any material misstatement, misrepresentation, *or* omission during the mortgage lending process, intending that it be relied upon by a mortgage lender, borrower, *or* any other party to the mortgage lending process;

(2) knowingly uses *or* facilitates the use of any material misstatement misrepresentation, *or* omission, during the mortgage lending process, intending that it be relied upon by a mortgage lender, borrower, *or* any other party to the mortgage lending process;

(3) files *or* causes to be filed with the Department of Land Management any document that the person knows contains a material misstatement, misrepresentation, *or* omission; *or*

(4) receives any proceeds *or* any compensation in connection with a mortgage loan that the person knows resulted from a violation of this Section.

§46.103. Classification of Offense.

9 GCA CRIMES AND CORRECTIONS
CH. 46 FORGERY, FRAUDULENT PRACTICES & TELEPHONE RECORDS

(a) Notwithstanding any other administrative, civil, *or* criminal penalties, a person who violates §46.102 of this Chapter is guilty of a:

(1) misdemeanor when the value is *or exceeds* Three Hundred Dollars (\$300) but is *less than* One Thousand Dollars (\$1,000);

(2) third degree felony when the value is *or exceeds* One Thousand Dollars (\$1,000) but is *less than* Five Thousand Dollars (\$5,000);

(3) second degree felony when the value is *or exceeds* Five Thousand Dollars (\$5,000);

(4) second degree felony when the object *or* purpose of the commission of an act of mortgage fraud is other than the obtaining of something of monetary value; and

(5) second degree felony when the object *or* purpose of the commission of an act of mortgage fraud is the obtaining of sensitive personal identifying information, regardless of the value.

(6) The determination of the degree of any offense under this Subsection (a) is measured by the total value of all property, money, *or* things obtained *or* sought to be obtained by a violation of §46.102 of this Chapter, *except* as provided in Subsections (a)(4) and (5).

(b) Each residential *or* commercial property transaction offense under this part constitutes a separate violation.

§46.104. Mortgage Fraud Prosecutor and Investigators.

(a) The Attorney General may employ:

(1) An attorney licensed to practice law who:

(A) has knowledge of the law related to mortgage fraud; and

(B) *if* possible, has a background *or* expertise in investigating and prosecuting mortgage fraud.

(2) At least two (2) investigators who have a background *or* expertise in investigating mortgage fraud.

(3) The attorney employed under Subsection (a) (1) has as that attorney's primary responsibility the prosecution of mortgage fraud.

(4) Each person employed under Subsection (b) *shall* have as

9 GCA CRIMES AND CORRECTIONS
CH. 46 FORGERY, FRAUDULENT PRACTICES & TELEPHONE RECORDS

that person's primary responsibility the investigation of mortgage fraud.

(5) clerks, interns, *or* other personnel to assist the attorney employed under Subsection (a) (1).
