

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

CHAPTER 46
FORGERY, FRAUDULENT PRACTICES & TELEPHONE RECORDS

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FORGERY AND FRAUDULENT PRACTICES

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§ 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:

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(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;

(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.

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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.

Section 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.

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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)(1). In addition, restitution may be ordered by the court.

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

(A) 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 (2), is not more than \$250;
or

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(B) 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 (2), is more than \$250, but not more than \$1000; or

(C) 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 (2), is more than \$1,000.

(2) 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,

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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.

(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.

2014 NOTE: Subsection designations in subsection (b) were altered to adhere to the Compiler's alpha-numeric scheme pursuant to the authority granted by 1 GCA § 1606.

§ 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.

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(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).

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

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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.

(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;

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(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.

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

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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;

(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.

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CROSS-REFERENCES: §§ 43.10 (3) - Property of another defined; 42.30 - Theft by unlawful disposition; § 4.60 - Aiding & A betting; § 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 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

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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:

(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.

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(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;

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(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:

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

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

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

(D) 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

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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.

2014 NOTE: Subsection designations in (a)(4) were altered to adhere to the Compiler's alpha-numeric scheme pursuant to the authority granted by 1 GCA § 1606.

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

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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.

(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:

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- (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.
- (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.

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(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.

(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.

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(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:

(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;

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- (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;
- (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.

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(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.

(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);

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(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 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).

ARTICLE 4
ANTI-PHISHING ACT

SOURCE: Article 4 added by P.L. 32-173:1 (July 9, 2014).

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- § 46.401. Legislative Findings and Intent.
- § 46.402. Definitions.
- § 46.403. Phishing and Pharming.
- § 46.404. Immunity for Disabling Phishing and Pharming Sites.
- § 46.405. Violations.
- § 46.406. Applicability.
- § 46.407. Severability.
- § 46.408. Effective Date.

§ 46.401. Legislative Findings and Intent.

I Liheslaturan Guåhan finds that phishing or pharming are acts that defraud someone by using a false website, or pretending to be a legitimate business on the web, and fraudulently obtaining identifying information. This Act enables lawsuits by internet service providers and owners of webpages or trademarks that are used without authorization in the conduct of a violation. It is the intent of *I Liheslatura* to ensure that phishing and pharming are illegal and that Guam has the ability to prosecute the bad actors that prey on the residents of Guam.

SOURCE: Added as § 46.400 by P.L. 32-173:1 (July 9, 2014). Codified to this section by the Compiler pursuant to 1 GCA § 1606.

§ 46.402. Definitions.

As used in this Act:

(a) entity includes corporations, business trusts, estates, partnerships, limited partnerships, limited liability partnerships, limited liability companies, associations, organizations, joint ventures, governments, governmental subdivisions, agencies, or instrumentalities, or any other legal entity, whether for profit or not-for-profit;

(b) individual means a natural person;

(c) identifying information means any information that can be used to access an individual's financial accounts or to obtain goods and services, including, but not limited to, address, birth date, social security number, driver's license number, non-driver governmental identification number, telephone number, bank account number, student identification, credit or debit card number, personal identification number, unique biometric data, employee or payroll number, automated or electronic signature, computer image,

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photograph, screen name or password. The term does not include information that is lawfully obtained from publicly available information, or from federal or local government records lawfully made available to the general public;

(d) false pretenses means the representation of a fact or circumstance which is not true and is calculated to mislead;

(e) webpage means a location that has a single uniform resource locator (URL) with respect to the world wide web, or another location that can be accessed on the internet.

SOURCE: Added as § 46.401 by P.L. 32-173:1 (July 9, 2014). Codified to this section by the Compiler pursuant to 1 GCA § 1606.

§ 46.403. Phishing and Pharming.

(a) Phishing. For the purposes of this Article 4, an individual or entity is guilty of phishing if, with intent to defraud or injure an individual, or with knowledge that he is facilitating a fraud or injury to be perpetrated by anyone:

(1) the actor makes any communication under false pretenses purporting to be by or on behalf of a legitimate business, without the authority or approval of the business; and

(2) the actor uses that communication to induce, request, or solicit any person to provide identifying information or property.

(b) Pharming. For the purposes of this Article 4, an individual or entity is guilty of pharming if, with intent to defraud or injure an individual, or with knowledge that he is facilitating a fraud or injury to be perpetrated by anyone:

(1) creates or operates a webpage that represents itself as belonging to or being associated with a legitimate business, without the authority or approval of such business, and that may induce any user of the internet to provide identifying information or property; or

(2) alters a setting on a user's computer or similar device or software program through which the user may search the internet and thereby causes any user of the internet to view a communication that represents itself as belonging to or being associated with a legitimate business, which message has been created or is operated without the

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authority or approval of such legitimate business and induces, requests or solicits any user of the internet to provide identifying information or property.

SOURCE: Added as § 46.402 by P.L. 32-173:1 (July 9, 2014). Codified to this section by the Compiler pursuant to 1 GCA § 1606.

§ 46.404. Immunity for Disabling Phishing and Pharming Sites.

No internet registrar or internet service provider may be held liable under any provision of the laws of Guam for removing or disabling access to an internet domain name controlled or operated by such registrar or by such provider, or to content that resides on an internet website or other online location controlled or operated by such provider, and that such provider believes in good faith is used to engage in a violation of this Act.

SOURCE: Added as § 46.403 by P.L. 32-173:1 (July 9, 2014). Codified to this section by the Compiler pursuant to 1 GCA § 1606.

§ 46.405. Violations.

(a) A person who violates this Act is guilty of a third degree felony, and is subject to a fine not to exceed Five Thousand Dollars (\$5,000), or imprisonment not to exceed five (5) years, or both.

(b) The following persons may bring a civil action against a person who violates this Act:

- (1) an internet service provider who is adversely affected by the violation;
- (2) an owner of a webpage, computer server, or a trademark that is used without authorization in the violation; or
- (3) the Attorney General.

(c) Except as provided by paragraph 3, a person permitted to bring a civil action may obtain either actual damages for a violation of this Act, or a civil penalty not to exceed One Hundred Fifty Thousand Dollars (\$150,000) per violation of this Act.

SOURCE: Added as § 46.404 by P.L. 32-173:1 (July 9, 2014). Codified to this section by the Compiler pursuant to 1 GCA § 1606.

§ 46.406. Applicability.

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This Act shall apply to the discovery of a phishing or pharming incident that occurs on or after the effective date of this Act. This Act does not apply to a telecommunications provider's or internet service provider's good faith transmission or routing of, or intermediate temporary storing or caching of, identifying information.

SOURCE: Added as § 46.405 by P.L. 32-173:1 (July 9, 2014). Codified to this section by the Compiler pursuant to 1 GCA § 1606.

§ 46.407. Severability.

If any provision of this Act or its application to any person or circumstance is found to be invalid or contrary to law, such invalidity shall not affect other provisions or application of this Act which can be given effect without the invalid provisions or application, and to this end the provisions of this Act are severable.

SOURCE: Added as § 46.406 by P.L. 32-173:1 (July 9, 2014). Codified to this section by the Compiler pursuant to 1 GCA § 1606.

§ 46.408. Effective Date.

This Act shall take effect one hundred twenty (120) days after the date of enactment.

SOURCE: Added as § 46.407 by P.L. 32-173:1 (July 9, 2014). Codified to this section by the Compiler pursuant to 1 GCA § 1606.

ARTICLE 5
COMPUTER PROTECTION ACT

SOURCE: Article 5 added by P.L. 32-174:1 (July 9, 2014).

2014 NOTE: Article 5 was renumbered to adhere to the Compiler's general codification scheme pursuant to 1 GCA § 1606. Accordingly, statutory references in the public law were altered to reflect the provisions as codified in the GCA.

- § 46.501. Legislative Intent.
- § 46.502. Definitions.
- § 46.503. Violations.
- § 46.504. Penalties.
- § 46.505. Forfeiture.

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- § 46.506. Civil Action by Attorney General.
- § 46.507. Lawfulness of Electronic Mail Service Provider Policies.
- § 46.508. Severability.

§ 46.501. Legislative Intent.

It is the intent of *I Liheslaturan Guðhan* to prohibit a person from using specified protected computers to relay or retransmit commercial electronic mail messages with the intent to deceive or mislead recipients, or an electronic mail service provider under specified circumstances; to prohibit a person from materially falsifying header information in commercial electronic mail messages under specified circumstances; to prohibit a person from registering for electronic mail accounts or domain names under specified circumstances; and to provide for specified penalties and fines.

SOURCE: Added as § 46.500 by P.L. 32-174:1 (July 9, 2014). Codified to this section by the Compiler pursuant to 1 GCA § 1606.

§ 46.502. Definitions.

In this Act, the following words have the meanings indicated:

(a) *commercial electronic mail message* means an electronic message sent primarily for the purpose of commercial advertisement or promotion of:

- (1) a commercial product;
- (2) a commercial service;
- (3) the content on an Internet website; or
- (4) a website operated for a commercial purpose;

(b) *domain name* means any alphanumeric designation that is registered with or assigned by a domain name registrar, domain name registry, or other domain name registration authority as part of an electronic mail address on the internet;

(c) *electronic mail service provider* means any person, including an internet service provider, that is an intermediary in sending and receiving electronic mail, and that provides to the public the ability to send or receive electronic mail to or from an electronic mail account or online user account;

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(d) *financial institution* means any financial institution of the type supervised under 11GCA, whether or not locally-chartered;

(e) *header information* means the source, destination, and routing information attached to an electronic mail message, including the originating domain name and originating electronic mails, and any other information that appears in the line identifying or purporting to identify a person initiating the message, and technical information that authenticates the sender of an electronic mail message for network security or network management purposes;

(f) the term *initiate*, when used with respect to a commercial electronic mail message, means to originate or transmit the message or to procure the origination or transmission of the message, and *does not* include actions that constitute routine conveyances of such message;

(g) *internet* means the international computer network of both federal and nonfederal interoperable packet switched data networks;

(h) *internet protocol address* means the string of numbers by which a location on the internet is identified by routers or other computers connected to the internet;

(i) *materially falsified* means altered or concealed in a manner that would impair the ability of one of the following to identify, locate, or respond to a person who initiated an electronic mail message or to investigate an alleged violation of this Act:

- (1) a recipient of the message;
- (2) an internet access service processing the message on behalf of a recipient;
- (3) a person alleging a violation of this Act; or
- (4) a law enforcement agency;

(j) *multiple* means:

- (1) more than ten (10) commercial electronic mail messages during a twenty four (24)-hour period;
- (2) more than one hundred (100) commercial electronic mail messages during a thirty (30)-day period; or

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(3) more than one thousand (1,000) commercial electronic mail messages during a one (1)-year period;

(k) *protected computer* means a computer used in intrastate or interstate communication;

(l) *routine conveyance* means the transmission, routing, relaying, handling, or storing, through an automatic technical process, of an electronic mail message for which another person has identified the recipients or provided the recipients' addresses.

SOURCE: Added as § 46.501 by P.L. 32-174:1 (July 9, 2014). Codified to this section by the Compiler pursuant to 1 GCA § 1606.

§ 46.503. Violations.

A person *may not* conspire to or knowingly:

(a) use a protected computer of another to relay or retransmit multiple commercial electronic mail messages with the intent to deceive or mislead recipients or an electronic mail service provider as to the origin of the message;

(b) materially falsify header information in multiple commercial electronic mail messages and intentionally initiate the transmission of the messages;

(c) register, using information that materially falsifies the identity of the actual registrant, for fifteen (15) or more electronic mail accounts or on-line user accounts of two or more domain names, and intentionally initiate the transmission of multiple commercial electronic mail messages from one or any combination of accounts or domain names;

(d) falsely represent the right to use five (5) or more internet protocol addresses and intentionally initiate the transmission of multiple commercial electronic mail messages from the internet protocol addresses;

(e) access a protected computer of another without authorization, and intentionally initiate the transmission of multiple electronic mail advertisements from or through the protected computer;

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(f) violate Subsections (a), (b), (c), (d) or (e) of this Section by providing or selecting addresses to which a message was transmitted, knowing that:

(1) the electronic mail addresses of the recipients were obtained using an automated means from an internet website or proprietary online service operated by another person; and

(2) the website or online service included, at the time the addresses were obtained, a notice stating that the operator of the website or online service will *not* transfer addresses maintained by the website or online service to any other party for the purposes of initiating or enabling others to initiate electronic mail messages; or

(g) violate Subsections (a), (b), (c), (d) or (e) of this Section by providing or selecting electronic mail addresses of recipients obtained using an automated means that generates possible electronic mail addresses by combining names, letters, or numbers into numerous permutations.

SOURCE: Added as § 46.502 by P.L. 32-174:1 (July 9, 2014). Codified to this section by the Compiler pursuant to 1 GCA § 1606.

§ 46.504. Penalties.

(a) A person who violates § 46.503 (a), (b), (c), (d) or (e) is guilty of a third degree felony, and upon conviction is subject to imprisonment not to exceed three (3) years or a fine not to exceed Five Thousand Dollars (\$5,000), or both.

(b) A person who violates § 46.503 (a), (b), (c), (d) or (e) involving the transmission of more than two hundred fifty (250) commercial electronic mail messages during a twenty-four (24) hour period; two thousand five hundred (2,500) commercial electronic mail messages during any thirty (30)-day period; or twenty five thousand (25,000) commercial electronic mail messages during any one (1)- year period is guilty of a second degree felony, and upon conviction is subject to imprisonment not to exceed five (5) years or a fine not to exceed Ten Thousand Dollars (\$10,000), or both.

(c) A person who violates § 46.503 (c) or (d) involving twenty (20) or more electronic mail accounts, or ten (10) or more domain names, and intentionally initiates the transmission of multiple commercial electronic mail messages from the accounts or using the domain names is guilty of a

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second degree felony, and upon conviction is subject to imprisonment not to exceed five (5) years or a fine not to exceed Ten Thousand Dollars (\$10,000), or both.

(d) A person who violates § 46.503 (a), (b), (c), (d) or (e) that causes a loss of One Thousand Dollars (\$1,000) or more during any one (1)-year period is guilty of a felony, and upon conviction is subject to imprisonment not to exceed three (3) years or a fine not to exceed Five Thousand Dollars (\$5,000), or both.

(e) A person who violates § 46.503 (a), (b), (c), (d) or (e) in concert with three (3) or more other persons as the leader or organizer of the action that constitutes the violation is guilty of a second degree felony, and upon conviction is subject to imprisonment not to exceed five (5) years or a fine not to exceed Ten Thousand Dollars (\$10,000), or both.

(f) A person who violates § 46.503 (a), (b), (c), (d) or (e) in furtherance of a felony, or who has previously been convicted of an offense under the laws of Guam, another state, or under any federal law involving the transmission of multiple commercial electronic mail messages is guilty of a second degree felony, and upon conviction is subject to imprisonment not to exceed ten (10) years or a fine not to exceed Twenty Five Thousand Dollars (\$25,000), or both.

(g) A person who violates § 46.503 (f) or (g) is guilty of a felony, and upon conviction is subject to imprisonment not to exceed one (1) year or a fine not to exceed Five Thousand Dollars (\$5,000), or both.

SOURCE: Added as § 46.503 by P.L. 32-174:1 (July 9, 2014). Codified to this section by the Compiler pursuant to 1 GCA § 1606.

2014 NOTE: References in the public law to § 46.502 were altered to § 46.503 to conform with the codification.

§ 46.505. Forfeiture.

In addition to any other sentence authorized by law, the court may direct that a person convicted of a violation of § 46.503 forfeit to the government of Guam:

(a) any moneys and other income, including all proceeds earned but not yet received by a defendant from a third party as a result of the defendant's violation of § 46.503; and

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(b) all computer equipment, computer software, and personal property used in connection with a violation of this section known by the owner to have been used in violation of § 46.503.

SOURCE: Added as § 46.504 by P.L. 32-174:1 (July 9, 2014). Codified to this section by the Compiler pursuant to 1 GCA § 1606.

2014 NOTE: References in the public law to § 46.502 were altered to § 46.503 to conform with the codification.

§ 46.506. Civil Action by Attorney General.

(a) An action brought under this Subsection *shall* be commenced within two (2) years after the commission of the act.

(b) The Attorney General may institute a civil action against a person who violates § 46.503 to recover a civil penalty not to exceed:

(1) \$25,000 per day of violation; or

(2) *not less than* Two Dollars (\$2.00) nor more than Eight Dollars (\$8.00) per commercial electronic mail message initiated in violation of § 46.503.

(3) For any violation of this Act, the amount determined under paragraph (b) may *not* exceed Two Million Dollars (\$2,000,000).

(c) The Attorney General may seek an injunction in a civil action to prohibit a person who has engaged in or is engaged in a violation of § 46.503 from engaging in the violation.

(d) The Attorney General may enforce criminal violations of this Act.

SOURCE: Added as § 46.505 by P.L. 32-174:1 (July 9, 2014). Codified to this section by the Compiler pursuant to 1 GCA § 1606.

2014 NOTE: Subsection (d) was originally enacted subsection (4), but this designation was manifest error and corrected by the Compiler. References in the public law to § 46.502 were altered to § 46.503 to conform with the codification.

§ 46.507. Lawfulness of Electronic Mail Service Provider Policies.

Nothing in this Act shall be construed to have any effect on the lawfulness of the adoption, implementation, or enforcement by an electronic mail service provider of a policy of declining to transmit, route, relay, handle, or store certain types of electronic mail messages under any other provision of law.

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SOURCE: Added as § 46.506 by P.L. 32-174:1 (July 9, 2014). Codified to this section by the Compiler pursuant to 1 GCA § 1606.

§ 46.508. Severability.

If any provision of this Act or its application to any person or circumstance is found to be invalid or contrary to law, such invalidity shall not affect other provisions or application of this Act which can be given effect without the invalid provisions or application, and to this end the provisions of this Act are severable.

SOURCE: Added as § 46.507 by P.L. 32-174:1 (July 9, 2014). Codified to this section by the Compiler pursuant to 1 GCA § 1606.

ARTICLE 6
COMPUTER SPYWARE PROTECTION ACT

SOURCE: Article 6 added by P.L. 32-175:1 (July 9, 2014).

- § 46.601. Title.
- § 46.602. Legislative Intent.
- § 46.603. Definitions.
- § 46.604. Prohibitions, Use of Software.
- § 46.605. Other Prohibitions.
- § 46.606. Exceptions.
- § 46.607. Remedies.
- § 46.608. Good Samaritan.

§ 46.601. Title.

This Act may be cited as the “Computer Spyware Protection Act.”

§ 46.602. Legislative Findings and Intent.

I Liheslaturan Guåhan finds that spyware is a problem that adversely affects nearly every computer connected to the internet. Spyware is a catch-all term for computer programs that can track computer users’ movements online. There are hundreds of programs that range from innocuous “ad-ware,” which generates pop-up advertisements, to more dangerous programs that can record a user’s keystrokes to gather personal information, such as credit card numbers and passwords, without their knowledge, and forward

this information to another entity without the consumer's consent. Spyware is a serious problem that can create substantial privacy risks, increase the risk of identity theft, and cause serious degradation to personal and business computers that can cost millions of dollars in lost productivity.

It is the intent of *I Liheslatura* to protect owners and operators of computers on Guam from the use of spyware and malware that is deceptively or surreptitiously installed on the owner's or the operator's computer.

§ 46.603. Definitions.

(a) *Cause to be copied* means to distribute or transfer computer software, or any component thereof. Such term *shall not* include providing:

(1) a transmission, routing, provision of intermediate temporary storage, or caching of software;

(2) a storage or hosting medium, such as a compact disk, website, or computer server through which the software was distributed by a third party; or

(3) an information location tool, such as a directory, index, reference, pointer, or hypertext link, through which the user of the computer located the software.

(b) *Computer software* means a sequence of instructions written in any programming language that is executed on a computer. Computer software *does not* include a data component of a web page that is *not* executable independently of the web page.

(c) *Computer virus* means a computer program or other set of instructions that is designed to degrade the performance of, or disable, a computer or computer network, and is designed to have the ability to replicate itself on other computers or computer networks without the authorization of the owners of those computers or computer networks.

(d) *Damage* means any significant impairment to the integrity or availability of data, software, a system, or information.

(e) *Execute*, when used with respect to computer software, means the performance of the functions or the carrying out of the instructions of the computer software.

(f) *Intentionally deceptive* means any of the following:

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- (1) an intentionally and materially false or fraudulent statement;
- (2) a statement or description that intentionally omits or misrepresents material information in order to deceive an owner or operator of a computer; or
- (3) an intentional and material failure to provide a notice to an owner or operator regarding the installation or execution of computer software for the purpose of deceiving the owner or operator.

(g) *Internet* means the global information system that is logically linked together by a globally unique address space based on the internet protocol (IP), or its subsequent extensions, and that is able to support communications using the transmission control protocol/internet protocol (TCP/IP) suite, or its subsequent extensions, or other IP-compatible protocols, and that provides, uses, or makes accessible, either publicly or privately, high-level services layered on the communications and related infrastructure described in this Subsection.

(h) *Owner* or *operator* means the owner or lessee of a computer, or a person using such computer with the owner or lessee's authorization, but *does not* include a person who owned a computer prior to the first retail sale of the computer.

(i) *Message* means a graphical or text communication presented to an authorized user of a computer.

(j) *Person* means any individual, partnership, corporation, limited liability company, or other organization, or any combination thereof.

(k) *Personally identifiable information* means any of the following information if it allows the entity holding the information to identify the owner or operator of a computer:

- (1) the first name or first initial in combination with the last name;
- (2) a home or other physical address including street name;
- (3) a personal identification code in conjunction with a password required to access an identified account, other than a password, personal identification number or other identification number transmitted by an authorized user to the issuer of the account or its agent;

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(4) a social security number, tax identification number, driver's license number, passport number, or any other government-issued identification number; or

(5) an account balance, overdraft history, or payment history that personally identifies an owner or operator of a computer.

§ 46.604. Prohibitions, Use of Software.

It is unlawful for a person who is *not* an owner or operator of a computer to cause computer software to be copied on such computer knowingly or with conscious avoidance of actual knowledge or willfully, and to use such software to do any of the following:

(a) modify, through intentionally deceptive means, settings of a computer that control any of the following:

(1) the web page that appears when an owner or operator launches an internet browser or similar computer software used to access and navigate the internet;

(2) the default provider or web proxy that an owner or operator uses to access or search the internet; or

(3) an owner's or an operator's list of bookmarks used to access web pages;

(b) collect, through intentionally deceptive means, personally identifiable information through any of the following means:

(1) the use of a keystroke-logging function that records all or substantially all keystrokes made by an owner or operator of a computer and transfers that information from the computer to another person;

(2) in a manner that correlates personally identifiable information with data regarding all or substantially all of the websites visited by an owner or operator, other than websites operated by the person providing such software, if the computer software was installed in a manner designed to conceal from all authorized users of the computer the fact that the software is being installed;

(3) by extracting from the hard drive of an owner's or an operator's computer, an owner's or an operator's social security

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number, tax identification number, driver's license number, passport number, any other government-issued identification number, account balances, or overdraft history for a purpose unrelated to any of the purposes of the software or service described to an authorized user;

(c) prevent, through intentionally deceptive means, an owner's or an operator's reasonable efforts to block the installation of or execution of, or to disable, computer software by causing computer software that the owner or operator has properly removed or disabled to automatically reinstall or reactivate on the computer without the authorization of an authorized user;

(d) intentionally misrepresent that computer software will be uninstalled or disabled by an owner's or an operator's action;

(e) through intentionally deceptive means, remove, disable, or render inoperative security, antispyware, or antivirus computer software installed on an owner's or an operator's computer;

(f) enable use of an owner's or an operator's computer to do any of the following:

(1) accessing or using a modem or internet service for the purpose of causing damage to an owner's or an operator's computer, or causing an owner or operator, or a third party affected by such conduct to incur financial charges for a service that the owner or operator did not authorize;

(2) opening multiple, sequential, stand-alone messages in an owner's or an operator's computer without the authorization of an owner or operator, and with knowledge that a reasonable computer user could not close the messages without turning off the computer or closing the software application in which the messages appear; provided, that this Subsection *shall not* apply to communications originated by the computer's operating system, originated by a software application that the user chooses to activate, originated by a service provider that the user chooses to use, or presented for any of the purposes described in §46.606;

(3) transmitting or relaying commercial electronic mail or a computer virus from the computer, where the transmission or

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relaying is initiated by a person other than the authorized user and without the authorization of an authorized user;

(g) modify any of the following settings related the computer's access to, or use of, the internet:

(1) settings that protect information about an owner or operator for the purpose of taking personally identifiable information of the owner or operator;

(2) security settings for the purpose of causing damage to a computer; or

(3) settings that protect the computer from the uses identified in Subsection (f) of this Section.

(h) prevent, without the authorization of an owner or operator, an owner's or an operator's reasonable efforts to block the installation of, or to disable, computer software by doing any of the following:

(1) presenting the owner or operator with an option to decline installation of computer software with knowledge that, when the option is selected by the authorized user, the installation nevertheless proceeds;

(2) falsely representing that computer software has been disabled;

(3) requiring in an intentionally deceptive manner the user to access the internet to remove the software with knowledge or reckless disregard of the fact that the software frequently operates in a manner that prevents the user from accessing the internet;

(4) changing the name, location or other designation information of the software for the purpose of preventing an authorized user from locating the software to remove it;

(5) using randomized or intentionally deceptive filenames, directory folders, formats, or registry entries for the purpose of avoiding detection and removal of the software by an authorized user;

(6) causing the installation of software in a particular computer directory or computer memory for the purpose of

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evading authorized users' attempts to remove the software from the computer; or

(7) requiring, without the authority of the owner of the computer, that an authorized user obtain a special code or download software from a third party to uninstall the software.

§ 46.605. Other Prohibitions.

It is unlawful for a person who is *not* an owner or operator of a computer to do any of the following with regard to the computer:

(a) induce an owner or operator to install a computer software component onto the owner's or the operator's computer by intentionally misrepresenting that installing computer software is necessary for security or privacy reasons or in order to open, view, or play a particular type of content; or

(b) using intentionally deceptive means to cause the execution of a computer software component with the intent of causing the computer to use such component in a manner that violates any other provision of this Article.

§ 46.606. Exceptions.

Sections 46.604 and 46.605 *shall not* apply to the monitoring of, or interaction with, an owner's or an operator's internet or other network connection, service, or computer, by a telecommunications carrier, cable operator, computer hardware or software provider, or provider of information service or interactive computer service for network or computer security purposes, diagnostics, technical support, maintenance, repair, network management, authorized updates of computer software or system firmware, authorized remote system management, or detection or prevention of the unauthorized use of or fraudulent or other illegal activities in connection with a network, service, or computer software, including scanning for and removing computer software prescribed under this Article.

§ 46.607. Remedies.

(a) The Attorney General, an internet service provider or software company that expends resources in good faith assisting authorized users harmed by a violation of this Article, or a trademark owner whose mark is used to deceive authorized users in violation of this Article, may bring a civil action against a person who violates any provision of this Article to recover

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actual damages, liquidated damages of *at least* One Thousand Dollars (\$1,000) per violation of this Article, not to exceed One Million Dollars (\$1,000,000) for a pattern or practice of such violations, attorney fees, and costs.

(b) The court may increase a damage award to an amount equal to not more than three times the amount otherwise recoverable under subsection 1 if the court determines that the defendant committed the violation willfully and knowingly.

(c) The court may reduce liquidated damages recoverable under subsection 1, to a minimum of one hundred dollars, not to exceed one hundred thousand dollars for each violation if the court finds that the defendant established and implemented practices and procedures reasonably designed to prevent a violation of this Article.

(d) In the case of a violation of § 46.604(f)(1) that causes a telecommunications carrier or provider of voice over internet protocol service to incur costs for the origination, transport, or termination of a call triggered using the modem or internet-capable device of a customer of such telecommunications carrier or provider as a result of such violation, the telecommunications carrier may bring a civil action against the violator to recover any or all of the following:

- (1) the charges such carrier or provider is obligated to pay to another carrier or to an information service provider as a result of the violation, including, but *not* limited to, charges for the origination, transport or termination of the call;
- (2) costs of handling customer inquiries or complaints with respect to amounts billed for such calls;
- (3) costs and a reasonable attorney's fee; and
- (4) an order to enjoin the violation.

(e) For purposes of a civil action under Subsections (a), (b) and (c), any single action or conduct that violates more than one Subsection of this Article *shall* be considered multiple violations based on the number of such Subsections violated.

§ 46.608. Good Samaritan.

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(a) No provider of computer software or of an interactive computer service may be held liable for identifying, naming, removing, disabling, or otherwise affecting a computer program through any action voluntarily undertaken, or service provided, where the provider:

(1) intends to identify accurately, prevent the installation or execution of, remove, or disable another computer program on a computer of a customer of such provider;

(2) reasonably believes the computer program exhibits behavior that violates this Act; and

(3) notifies the authorized user and obtains clear and conspicuous consent before undertaking such action or providing such service.

(b) A provider of computer software or interactive computer service is entitled to protection under this Section *only* if such provider:

(1) has established internal practices and procedures to evaluate computer programs reasonably designed to determine whether or not a computer program exhibits behavior that violates this Act; and

(2) has established a process for managing disputes and inquiries regarding misclassification or false positive identifications of computer programs. Nothing in this Section is intended to limit the ability of the Attorney General, or a District Attorney, to bring an action against a provider of computer software or of an interactive computer service.
