

Effective 5/12/2015

Part 18
Communications Fraud and Misrepresentation

76-10-1801 Communications fraud -- Elements -- Penalties.

- (1) Any person who has devised any scheme or artifice to defraud another or to obtain from another money, property, or anything of value by means of false or fraudulent pretenses, representations, promises, or material omissions, and who communicates directly or indirectly with any person by any means for the purpose of executing or concealing the scheme or artifice is guilty of:
 - (a) a class B misdemeanor when the value of the property, money, or thing obtained or sought to be obtained is less than \$500;
 - (b) a class A misdemeanor when the value of the property, money, or thing obtained or sought to be obtained is or exceeds \$500 but is less than \$1,500;
 - (c) a third degree felony when the value of the property, money, or thing obtained or sought to be obtained is or exceeds \$1,500 but is less than \$5,000;
 - (d) a second degree felony when the value of the property, money, or thing obtained or sought to be obtained is or exceeds \$5,000; and
 - (e) a second degree felony when the object or purpose of the scheme or artifice to defraud is the obtaining of sensitive personal identifying information, regardless of the value.
- (2) The determination of the degree of any offense under Subsection (1) shall be measured by the total value of all property, money, or things obtained or sought to be obtained by the scheme or artifice described in Subsection (1) except as provided in Subsection (1)(e).
- (3) Reliance on the part of any person is not a necessary element of the offense described in Subsection (1).
- (4) An intent on the part of the perpetrator of any offense described in Subsection (1) to permanently deprive any person of property, money, or thing of value is not a necessary element of the offense.
- (5) Each separate communication made for the purpose of executing or concealing a scheme or artifice described in Subsection (1) is a separate act and offense of communication fraud.
- (6)
 - (a) To communicate as described in Subsection (1) means to:
 - (i) bestow, convey, make known, recount, or impart;
 - (ii) give by way of information;
 - (iii) talk over; or
 - (iv) transmit information.
 - (b) Means of communication include use of the mail, telephone, telegraph, radio, television, newspaper, computer, and spoken and written communication.
- (7) A person may not be convicted under this section unless the pretenses, representations, promises, or material omissions made or omitted were made or omitted intentionally, knowingly, or with a reckless disregard for the truth.
- (8) As used in this section, "sensitive personal identifying information" means information regarding an individual's:
 - (a) Social Security number;
 - (b) driver's license number or other government issued identification number;
 - (c) financial account number or credit or debit card number;

- (d) password or personal identification number or other identification required to gain access to a financial account or a secure website;
- (e) automated or electronic signature;
- (f) unique biometric data; or
- (g) any other information that can be used to gain access to an individual's financial accounts or to obtain goods or services.

Amended by Chapter 193, 2010 General Session

76-10-1802 Misrepresentation of call or text communication identification.

- (1) As used in this section:
 - (a) "Caller or text message identification information" means information provided by a caller identification service or text message service regarding the telephone number or other information regarding the origination of a call or text message made using a telecommunications service or VoIP voice service.
 - (b) "Caller or text message identification service" means any service or device designed to provide the user of the service or device with the telephone number of, or other information regarding, the origination of a call or text message made using a telecommunications service or VoIP voice service, including automatic number identification services.
 - (c) "Text message":
 - (i) means a real-time or near real-time message consisting of text, images, sounds, or other information transmitted from or received by a device identified by a telephone number; and
 - (ii) does not include a real-time, two-way voice or video communication.
 - (d) "VoIP" means a technology that allows telephone calls to be made over computer networks, including the Internet.
- (2) It is unlawful for any person or individual, in connection with any telecommunications service or VoIP voice service, to knowingly cause any caller identification service or text message service to transmit false, misleading, or inaccurate caller or text message identification information:
 - (a) with the intent to harm the recipient of the call or text message; or
 - (b) to a public safety answering point when reporting an emergency.
- (3) This section does not prevent or restrict any person or individual from blocking the capability of any caller or text message identification service to transmit caller or text message identification information.
- (4) The following are exempt from this section:
 - (a) the lawful investigative, protective, or intelligence activity of a law enforcement agency; and
 - (b) a court order that specifically authorizes the use of caller or text message identification manipulation.
- (5) Each separate call or text message transmitted in violation of this section is:
 - (a) for a first violation, a class C misdemeanor; and
 - (b) for a second or subsequent violation, a class B misdemeanor.
- (6) Violations may be enforced in a civil action initiated by the recipient of a call, message, or text message made in violation of this section, a criminal action initiated by a prosecuting attorney, or both.
- (7) This section does not apply to an Internet service provider or hosting company, a provider of public telecommunications services, or a text message service by reason of the fact that the Internet service provider, hosting company, text message service, or provider of public telecommunications services:
 - (a) transmits, routes, or provides connections for material without selecting the material;

- (b) stores or delivers the material at the direction of a user; or
- (c) provides a caller or text message identification service.

Enacted by Chapter 151, 2015 General Session