

A Bill for an Act Relating to the Hawaii Penal Code.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 800, chapter 8, Hawaii Penal Code, title 37, Hawaii Revised Statutes, is amended to read as follows:

“Sec. 800 Definitions of terms in this chapter. In this chapter, unless a different meaning plainly is required, the following definitions apply:

“(1) ‘Building’ includes any structure, and the term also includes any vehicle, railway, car, aircraft, or watercraft used for lodging of persons therein; each unit of a building consisting of two or more units separately secured or occupied is a separate building;

(2) ‘Control over the property’ means the exercise of dominion over the property and includes, but is not limited to, taking, carrying away, or possessing the property, or selling, conveying, or transferring title to or an interest in the property;

(3) ‘Dealer’ means a person in the business of buying and selling goods;

(4) ‘Deception’ occurs when a person knowingly:

- (a) creates or confirms another’s impression which is false and which the defendant does not believe to be true; or
- (b) fails to correct a false impression which he previously has created or confirmed; or
- (c) prevents another from acquiring information pertinent to the disposition of the property involved; or
- (d) sells or otherwise transfers or encumbers property, failing to disclose a lien, adverse claim or other legal impediment to the enjoyment of the property, whether that impediment is or is not valid, or is or is not a matter of record; or
- (e) promises performance which he does not intend to perform or knows will not be performed, but a person’s intention not to perform a promise shall not be inferred from the fact alone that he did not subsequently perform the promise.

The term ‘deception’ does not, however, include falsity as to matters having no pecuniary significance, or puffing by statements unlikely to deceive ordinary persons in the group addressed. ‘Puffing’ means an exaggerated commendation of wares or services in communications addressed to the public or to a class or group.

(5) ‘Deprive’ means:

- (a) To withhold property or cause it to be withheld from a person permanently or for so extended a period or under such circumstance that a significant portion of its economic value, or of the use and benefit thereof, is lost to him; or
- (b) To dispose of the property so as to make it unlikely that the owner will recover it; or
- (c) To retain the property with intent to restore it to the owner only if the owner purchases or leases it back, or pays a reward or other compensation for its return; or

(d) To sell, give, pledge, or otherwise transfer any interest in the property; or

(e) To subject the property to the claim of a person other than the owner.

(6) 'Dwelling' means a building which is used or usually used by a person for lodging.

(7) 'Enter or remain unlawfully.' A person 'enters or remains unlawfully' in or upon premises when he is not licensed, invited, or otherwise privileged to do so. A person who, regardless of his intent, enters or remains in or upon premises which are at the time open to the public does so with license and privilege unless he defies a lawful order not to enter or remain, personally communicated to him by the owner of the premises or some other authorized person. A license or privilege to enter or remain in a building which is only partly open to the public is not a license or privilege to enter or remain in that part of the building which is not open to the public. A person who enters or remains upon unimproved and apparently unused land, which is neither fenced nor otherwise enclosed in a manner designed to exclude intruders, does so with license and privilege unless notice against trespass is personally communicated to him by the owner of the land or some other authorized person, or unless notice is given by posting in a conspicuous manner.

(8) 'Extortion' means to obtain, or exert control over, property of another, or to obtain service, by threatening to:

(a) Cause bodily injury in the future to the person threatened or to any other person; or

(b) Cause damage to property; or

(c) Subject the person threatened or any other person to physical confinement or restraint; or

(d) Commit a penal offense; or

(e) Accuse some person of an offense or cause a penal charge to be instituted against some person; or

(f) Expose a secret or publicize an asserted fact, whether true or false, tending to subject some person to hatred, contempt, or ridicule, or to impair his credit or business repute; or

(g) Reveal any information sought to be concealed by the person threatened or any other person; or

(h) Testify or provide information or withhold testimony or information with respect to another's legal claim or defense; or

(i) Take or withhold action as a public servant, or cause a public servant to take or withhold such action; or

(j) Bring about or continue a strike, boycott, or other similar collective action, to obtain property which is not demanded or received for the benefit of the group which the defendant purports to represent; or

(k) Do any other act which would not in itself substantially benefit the defendant but which is calculated to harm substantially some person with respect to his health, safety, business, calling, career, financial condition, reputation, or personal relationships.

(9) 'Financial institution' means a bank, trust company, insurance company, credit union, safety deposit company, savings and loan association, in-

vestment trust, or other organization held out to the public as a place of deposit of funds or medium of savings or collective investment.

(10) 'Government' means the United States, or any state, county, municipality, or other political unit within territory belonging to the United States, or any department, agency, or subdivision of any of the foregoing, or any corporation or other association carrying out the functions of government, or any corporation or agency formed pursuant to interstate compact or international treaty. As used in this definition 'state' includes any state, territory, or possession of the United States, the District of Columbia, and the Commonwealth of Puerto Rico.

(11) 'Intent to defraud' means:

- (a) An intent to use deception to injure another's interest which has value; or
- (b) Knowledge by the defendant that he is facilitating an injury to another's interest which has value.

(12) 'Obtain' means:

- (a) When used in relation to property, to bring about a transfer of possession or other interest, whether to the obtainer or to another; and
- (b) When used in relation to services, to secure the performance of services.

(13) 'Owner' means a person, other than the defendant, who has possession of or any other interest in, the property involved, even though that possession or interest is unlawful; however, a secured party is not an owner in relation to a defendant who is a debtor with respect to property in which the secured party has only a security interest.

(14) 'Premises' includes any building and any real property.

(15) 'Property' means any money, personal property, real property, thing in action, evidence of debt or contract, or article of value of any kind. Commodities of a public utility nature such as gas, electricity, steam, and water constitute property, but the supplying of such a commodity to premises from an outside source by means of wires, pipes, conduits or other equipment shall be deemed a rendition of a service rather than a sale or delivery of property.

(16) 'Property of another' means property which any person, other than the defendant, has possession of or any other interest in, even though that possession or interest is unlawful; however, a security interest is not an interest in property, even if title is in the secured party pursuant to the security agreement.

(17) 'Receiving' includes but is not limited to acquiring possession, control, or title, and taking a security interest in the property.

(18) 'Services' includes but is not limited to labor, professional services, transportation, telephone or other public services, accommodation in hotels, restaurants or elsewhere, admission to exhibitions, and the supplying of equipment for use.

(19) 'Stolen' means obtained by theft or robbery.

(20) 'Unauthorized control over property' means control over property of another which is not authorized by the owner.

(21) 'Widely dangerous means' includes explosion, fire, flood, avalanche,

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collapse of building, poison gas, radioactive material, or any other material, substance, force, or means capable of causing potential widespread injury or damage.”

SECTION 2. Statutory material to be repealed is bracketed. New material is underscored. In printing this Act, the revisor of statutes need not include the brackets, the bracketed material, or the underscoring.*

SECTION 3. This Act shall take effect upon its approval.

(Approved June 10, 1974.)

*Edited accordingly.