

Obtaining Identity by Electronic Fraud

This Act creates a new criminal offense known as “obtaining identity by electronic fraud.” It defines obtaining identity by electronic fraud as knowingly and willfully soliciting, requesting or taking any action by means of a fraudulent electronic communication with intent to obtain the personal identifying information of another.

“Fraudulent electronic communication” means a communication by a person that is an electronic mail message, web site or any other use of the Internet that contains fraudulent, false, fictitious or misleading information that depicts or includes the name, logo, web site address, email address, postal address, telephone number or any other identifying information of a business, organization or state agency, to which the person has no legitimate claim of right.

Submitted as:
New Mexico
Chapter 178
Status: Enacted into law in 2005.

Suggested State Legislation

(Title, enacting clause, etc.)

1 Section 1. [*Short Title.*] This Act may be cited as “An Act Creating a New Criminal
2 Offense Known as Obtaining Identity by Electronic Fraud.”

3
4 Section 2. [*Definitions.*] C. As used in this Act:

5 A. “Fraudulent electronic communication” means a communication by a person that is an
6 electronic mail message, web site or any other use of the internet that contains fraudulent, false,
7 fictitious or misleading information that depicts or includes the name, logo, web site address,
8 email address, postal address, telephone number or any other identifying information of a
9 business, organization or state agency, to which the person has no legitimate claim of right; and

10 B. “Personal identifying information” means information that alone or in conjunction
11 with other information identifies a person, including the person's name, address, telephone
12 number, driver's license number, social security number, place of employment, maiden name of
13 the person's mother, demand deposit account number, checking or savings account number,
14 credit card or debit card number, personal identification number, passwords or any other
15 numbers or information that can be used to access a person's financial resources.

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17 Section 3. [*Theft of Identity and Obtaining Identity by Electronic Fraud.*]

18 A. Theft of identity consists of willfully obtaining, recording or transferring personal
19 identifying information of another person without the authorization or consent of that person and
20 with the intent to defraud that person or another.

21 B. Obtaining identity by electronic fraud consists of knowingly and willfully soliciting,
22 requesting or taking any action by means of a fraudulent electronic communication with intent to
23 obtain the personal identifying information of another.

24 C. Whoever commits theft of identity is guilty of a [fourth degree felony].

25 D. Whoever commits obtaining identity by electronic fraud is guilty of a [fourth degree
26 felony].

27 E. Prosecution pursuant to this section shall not prevent prosecution pursuant to any other
28 provision of the law when the conduct also constitutes a violation of that other provision.

29 F. In a prosecution brought pursuant to this section, the theft of identity or obtaining
30 identity by electronic fraud shall be considered to have been committed in the county:

31 (1) where the person whose identifying information was appropriated, obtained or
32 sought resided at the time of the offense; or

33 (2) in which any part of the offense took place, regardless of whether the
34 defendant was ever actually present in the county.

35 G. A person found guilty of theft of identity or of obtaining identity by electronic fraud
36 shall, in addition to any other punishment, be ordered to make restitution for any financial loss
37 sustained by a person injured as the direct result of the offense. In addition to out-of-pocket
38 costs, restitution may include payment for costs, including attorney fees, incurred by that person
39 in clearing the person's credit history or credit rating or costs incurred in connection with a civil
40 or administrative proceeding to satisfy a debt, lien, judgment or other obligation of that person
41 arising as a result of the offense.

42 H. The sentencing court shall issue written findings of fact and may issue orders as are
43 necessary to correct a public record that contains false information as a result of the theft of
44 identity or of obtaining identity by electronic fraud.

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46 Section 4. [*Severability.*] [Insert severability clause.]

47

48 Section 5. [*Repealer.*] [Insert repealer clause.]

49

50 Section 6. [*Effective Date.*] [Insert effective date.]