

THE TWENTY-EIGHTH LEGISLATURE

FIRST REGULAR SESSION

Begun and held at Fagatogo, Tutuila, American Samoa  
on Monday, the thirteenth day of January  
two thousand and three

AN ACT CODIFYING THE CRIME OF FRAUD, AMENDING SECTION  
46.4101 A.S.C.A.; AND CREATING A SECTION 46.4129 UNDER CHAPTER  
41 OF TITLE 46 A.S.C.A.

BE IT ENACTED BY THE LEGISLATURE OF AMERICAN SAMOA:

**Section 1. 46.4101 is amended to read:**

**“46.4101 Definitions.**

**As used in this chapter:**

(a) **“Adulterated” means varying from the standard of composition or quality prescribed by statute or lawfully adopted administrative rules of this Territory lawfully filed, or if none, as set by commercial usage.**

(b) **“Appropriate” means to take, obtain, use, transfer, conceal, or retain possession of.**

(c) **“Coercion” means a threat, however communicated to:**

- (1) **commit any crime;**
- (2) **inflict physical injury in the future on the person threatened or another;**
- (3) **accuse any person of any crime;**
- (4) **expose any person to hatred, contempt or ridicule;**
- (5) **harm the credit or business repute of any person;**
- (6) **take or withhold action as a public servant, or to cause a public servant to take or withhold action; or**

**(7) inflict any other harm which would not benefit the actor.**

A threat of accusation, lawsuit, or other invocation of official action is not coercion if the property sought to be obtained by virtue of the threat was honestly claimed as restitution or indemnification for harm done in the circumstances to which the accusation, exposure, lawsuit, or other official action relates, or as compensation for property or lawful service. The defendant has the burden of injecting the issue of justification as to any threat.

**(d) "Credit device" means a writing, number, or other device 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.**

**(e) "Dealer" means a person in the business of buying and selling goods.**

**(f) "Deceit" means purposely making a representation which is false and which the actor does not believe to be true and upon which the victim relies, as to a matter of fact, law, value, intention, or other state of mind. The term "deceit" 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. Deception as to the actor's intention to perform a promise shall not be inferred from the fact alone that he did not subsequently perform the promise.**

**(g) "Defraud" means to swindle, cheat or trick; a deliberate deception practiced so as to secure unfair or unlawful gain.**

**~~(g)~~ (h) "Deprive" means to:**

- (1) withhold property from the owners permanently;**
- (2) restore property only upon payment of reward or other compensation; or**
- (3) use or dispose of property in a manner that makes recovery of the property by the owner unlikely;**

**~~(h)~~ (i) "Misabeled" means varying from the standard of truth or disclosure in labeling prescribed by statute or lawfully adopted administrative rules of this territory lawfully filed, or if none, as set by commercial usage; or**

represented as being another person's product, though otherwise accurately labeled as to quality and quantity.

~~(i)~~ **(j)** **Of another: property or services means that "of another" if any natural person, corporation, partnership, association, governmental subdivision, or instrumentality, other than the actor, has a possessory or proprietary interest in it; except, that property is not considered property of another who has only a security interest in it, even if legal title is in the creditor under a conditional sales contract or other security arrangement.**

~~(j)~~ **(k)** **"Property" means anything of value whether real or personal, tangible or intangible, in possession or in action, and includes but is not limited to the evidence of a debt actually executed but not delivered or issued as a valid instrument.**

~~(k)~~ **(l)** **"Receiving" means acquiring possession, control, or title or lending on the security of the property.**

~~(l)~~ **(m)** **"Services" includes transportation, telephone, electricity, gas, water, or other public service, accommodation in hotels, restaurants, or elsewhere, admission to exhibitions and use of vehicles.**

~~(m)~~ **(n)** **"Writing" includes printing, any other method of recording information, money, coins, negotiable instruments, tokens, stamps, seals, credit cards, badges, trademarks and any other symbols of value, right, privilege, or identification."**

**Sec 2. There is created a section 46.4129 which reads:**


**"46.4129 Criminal fraud.**

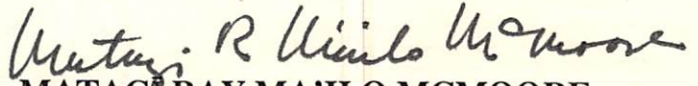
**(a) A person commits the crime of fraud if he knowingly and willfully:**

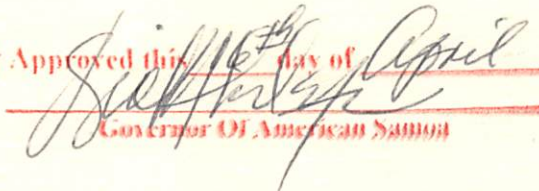
**(1) obtains money, property or undue advantage by use of any device, scheme or artifice to defraud by means of false or fraudulent pretenses; or**

**(2) falsifies, misrepresents, conceals or covers up by any trick, scheme, or device a material fact, or makes any false, fictitious or fraudulent statement or representation, or makes or uses any false writing or document knowing the same to contain any false, fictitious or fraudulent statement or entry.**

(b) Criminal fraud is a class C felony.”

  
**LUTU TENARI S. FUIMAONO**  
President of the Senate

  
**MATAGI RAY MA'ILO MCMOORE**  
Speaker of the House

Hereby Approved this 16<sup>th</sup> day of April 2003  
  
Governor Of American Samoa

NOFOAIGA LUASEFULU-VALU FONOFAITULAFONO AMERIKA SAMOA

Fono Tele Muamua

Nofoia ma usua i Fagatogo, Tutuila, Amerika Samoa  
Aso Gafua, aso sefulutolu o Ianuari  
lua afe ma le tolu

O SE TULAFONO E FA'ATULAFONOINA AI SOLITULAFONO O LE  
TAUFA'ASESE, SUIA AI LE MAGA 46.4101 T.T.A.S.; MA FA'AVAE AI LE  
MAGA 46.4129 I LALO O LE MATA'UPU 41 O LE ULUTALA 46 T.T.A.S.

IA FA'ATULAFONOINA E LE FONO FAITULAFONO A AMERIKA SAMOA

**Maga 1      46.4101 ua suia e faitauina:**

**“46.4101      Fa'apupulaga**

**E pei ona fa'aaogaina i lenei mata'upu:**

(a) **“Fa'aleagaina i le fa'aopoopoina” o lona uiga o le suia mai le  
fa'avae o le fa'atulagaga po'o le tulaga atoatoa ua aiaia e le tulafono po'o  
tulafono galue tau pulega ua fa'amaoniaina fa'aletulafono a lenei Teritori  
fa'aulufaleina e tusa ma le tulafono, ae afai e leai, e pei ona fa'atulagaina i le  
fa'aaogaina i fefa'ataua'iga.**

(e) **“Ave mona” o lona uiga ave, maua, fa'aaoga, tu'uina atu, nanā,  
pe taofi se meatotino.**

(i) **“Fa'amalosia” o lona uiga o se taufa'amata'u, aepeita'i e  
feso'ota'i ma le:**

- (1) **faia o so'o se solitulafono;**
- (2) **fa'ao'oina atu o se manu'a o le tino i le lumana'i i se tagata ua  
fa'amata'uina po'o se isi;**
- (3) **tua'ia so'o se tagata i so'o se solitulafono;**
- (4) **fa'aosoina so'o se tagata i le ita, le fiafia pe ulagia;**

(5) fa'ata'uvaleaina le fa'atuatuaina po'o le igoa o se pisinisi a so'o se tagata;

(6) faia pe taofia se tagi o se auaua lautele, pe fa'aosoina se auaua lautele e faia pe taofia se tagi; po'o

(7) fa'ati'eti'e atu so'o se isi afaina e le manuia ai lē na fa'atupuina.

O se fa'amata'uina o se tua'iga, tagi fa'aletulafono po'o isi fa'ae'eina atu o tagi fa'aletulafono e le fa'amalosia pe afai o le sa'ilia o se meatotino e maua mai le tulaga moni lava o le taufa'amata'u sa talosagaina e fai ma suiga ma puipuiga mo le afaina e faia i le tulaga ua a'afia ai e felata'i ai tua'iga, fa'aaliali, tagi fa'aletulafono, po'o mata'upu fa'aletulafono, pe fai ma totogi mo meatotino po'o tautua fa'aletulafono. O le-ua-molia o ia te ia le avegatau'ave e fa'aofi maia le mata'upu o le fa'amaoniga e fa'atatau i so'o se fa'amata'u.

(o) "Fuafuaga o aitalafu" o lona uiga o se tusitusiga, numera, po'o fuafuaga e fa'ao'o atu e fa'amaonia ai se fa'atinoga e totogi ai mo se meatotino po'o tautua e tu'uina atu pe fa'atinoina pe e tusa ma le poloa'iga ua fa'asinoia fa'apitoa po'o sē e tau'aveina.

(u) "Faioloa" o lona uiga o se tagata o fa'agaioia se pisinisi o le fa'atau mai ma le fa'atauina atu o oloa.

(f) "Taufa'a'ole'ole" o lona uiga o le faia ma le fa'amoemoe se fa'aaliga e sese ma o se tulaga e lē talitonu le na faia e sa'o ma o lea tulaga ua fa'alagolago iai le ua afaina, e tusa o se mea moni, tulafono, tauā, fa'amoemoeina, po'o se isi tulaga o le mafaufau. O le 'upu o le "taufa'a'ole'ole e lē, ae peita'i, e aofia ai le lē tonu e fa'atatau i mata'upu e iai se tauā tau tupe, pe fa'avi'ivi'i i fa'amatalaga e lē foliga mai e fa'asese ai tagata lautele i le vaega ua fa'atatau i ai. O le taufa'a'ole'ole e pei o le fa'amoemoe o le tagata e faia e fa'ataunu'u ai se folafolaga ma ia lē fa'auigaina e mai na'o le tulaga moni e fa'apea na te le'i fa'ataunu'uina mulimuli ane lea folafolaga.

(g) "Fa'a'ole'olega" o lona uiga o le taufa'asese, fa'atogafiti pe taumalei; o se taufa'asese fa'alilo mafaufauina ina ia maua ai ma le lē tonu pe lē tusa ai ma le tulafono se taui(tupe ma isi mea)

~~(g)~~ (l) "Ave'esea" o lona uiga:

(1) taofia tumau se meatotino mai le e ōnaina;

(2) toefa'afo'i atu se meatotino e ala i le totogiina o se tau'i po'o se isi totogi fa'atusatusa; po'o

(3) fa'aaoga pe fa'atau atu le meatotino i se tulaga e toe maua mai ai se mea e tusa ma le meatotino e 'ese mai ai e pei ona faia e le ōna le meatotino;

(4) (m) "Fa'ailogaina sese" o lona uiga fa'a'ese'ese mai le fua o le mea moni po'o le fa'aaliaina i le fa'ailogaina ua aiaia e le tulafono po'o tulafono galue tau pulega ua fa'amaoniaina fa'aletulafono a lenei teritori na fa'aulufaleina fa'aletulafono, ae afai e leai, e pei ona fa'atulagaina i lona fa'aaogaina i fefa'ataua'iga; pe suitulaga o se foafoaga a se tasi tagata, atonu ua lelei ona fa'ailogaina e 'ese mai ai i lona lelei ma le aofa'iga.

(m) (n) A se isi: meatotino po'o tautua o lona uiga e fa'apea "a se isi" afai o se tagata soifua, koporesi, pisinisi paaga, sosaiete, soavaega o le malo, po'o fa'alapotopotoga, e 'ese mai ai i lē na faia, ma o iai se naunauta'iga i ai e umia pe pulea; vagana ai, o lona meatotino e le o se meatotino a se tasi o se o iai na'o se naunauta'iga o se folafolaga e fa'ataunu'uina, e tusa lava pe afai o le pule fa'aletulafono o lo'o i le tagata e nono atu i lalo o se feagaiga o aiaiga o fa'atauga po'o isi fa'atulagaga o se folafolaga mo le totogia.

(n) (p) "Meatotino" o lona uiga o so'o se mea tauā e moni pe fa'apitoa, e iai se tino pe leai fo'i, o lo'o umia po'o o fa'agaioia fo'i, ma e aofia ai ae le fa'atapula'aina i le fa'amaoniga o se aitalafu moni ua aiaia pe ua tu'uina atu o se fa'amauga aloa'ia fa'aletulafono.

(p) (s) "Tauaaoina" o lona uiga o le mauaina o le pule, pulea, po'o le aiā po'o le tu'uina atu o le tausiga o se meatotino.

(s) (t) "Tautua" e aofia ai femalaga'iga, telefoni, eletise, kesi, suavai, po'o isi tautua lautele, potu i fale talimalo, fale aiga, po'o isi nofoaga, fa'atagaina i fa'aaliga lautele ma le fa'aaogaina o ta'avale.

(t) (v) "Tusitusiga" e aofia ai lomiga, so'o se auala o fa'amauga o fa'amatalaga, tupe, tupe siliva, fa'amauga o aiaiga aiaia, fa'aailoga, fa'aailoga o meli (po'o maka), sila, pepa aitalafu, fa'aailoga o se totino, fa'aailoga fa'apitoa o pisinisi ma so'o se isi fa'aailoga tauā, aiā, avanoa, po'o le fa'amaoniga o se tagata."

Maga 2. Ua fa'avaeina le maga 46.4129 i lalo o le Ulutala 46 e faitauina:

“46.4129 Solitulafono mamafa taufa’a’ole’ole.

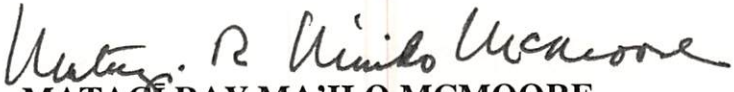
(a) Ua faia e se tagata le solitulafono o le tau fa’a’ole’ole pe afai ua faia ma lona iloa lelei ma loto iai:

(1) e maua ai ni tupe, meatotino po’o le fa’alimapotoina i le fa’aaogaina o so’o se togafiti, fuafuaga taufa’asese po’o se masini e fa’asese ai e ala i fuafuaga tau fa’asese pe le fa’amaoni; po’o

(2) fa’asese, tu’uina atu o se manatu tonu, fa’alilo pe ufiufi e ala i so’o se togafiti, fuafuaga, porokalama se mea moni tauā, po’o le faia o se fa’amatalaga po’o fa’aaliga sese, fa’atupu pe fa’a’ole’ole; po’o le faia po’o le fa’aaogaina o so’o se tusitusiga le sa’o po’o se fa’amaumauga ma le iloa o lea tusitusiga o lo’o iai se fa’amatalaga po’o fa’amaumauga le tonu, fa’atupu pe fa’a’ole’ole.

(e) Solitulafono mamafa Taufa’a’ole’ole o se solitulafono mamafa vasega I.”

  
LUTU TENARI S. FUIMAONO  
Peresetene, Maota Maualuga

  
MATAGI RAY MA’ILO MCMOORE  
Fofoga Fetalai, Maota o Sui

Hereby Approved this 16th day of April 2003

  
Governor Of American Samoa