Fraud Is Fraud Act

Model legislation from The Existentialist Republic, Oct. 28, 2026. Bracketed items conform to state law.

The Fraud Is Fraud Act applies the standards of securities, consumer protection and advertising law to lies told to a mass audience. It makes it a crime to knowingly lie to the public for money, to knowingly sell a lie as news, to knowingly lie in a paid political message, and to knowingly lie to keep people from voting. The attorney general can subpoena witnesses and records before filing any lawsuit and can recover money without proving that anyone relied on the lie, the same powers New York's attorney general has used against securities fraud since 1921. The people who paid for the lie, the voters it targeted and anyone it physically harmed can sue for three times their damages.

AN ACT relating to fraud committed by means of mass communication.

Section 1. Short title

This act may be cited as the Fraud Is Fraud Act.

Section 2. Findings

The legislature finds:

(a) A false statement of material fact made in the course of business is fraud whether a person makes it over the telephone, in a prospectus, in an advertisement, on a broadcast or in an online video. The state's power to punish fraud reaches every medium that carries it.

(b) A stockbroker, an advertiser, a telemarketer and a seller of any product answer for a knowing falsehood under laws that require no proof that any customer relied on it and that count each day of a deceptive practice as a separate violation. A person who sells news, a person paid to make political statements and a person who lies to voters answer to no such law.

(c) A person who reaches thousands of people at once with a knowing falsehood takes more money from more people, and does more harm, than a fraud carried out one telephone call at a time.

(d) The state has a compelling interest in protecting every eligible voter from knowingly false statements about an election and in protecting the public from knowingly false statements that cause physical harm.

(e) New York's Martin Act has protected investors since 1921 by letting the attorney general investigate before filing suit and recover money without proof that each victim relied on the fraud. This act applies those powers to fraud committed by means of mass communication.

Section 3. Definitions

In this act:

(a) "Mass communication" means a broadcast, cable, satellite or streaming program, a podcast, a newsletter or periodical, a website or mobile application, a message sent to more than [100] recipients, a post or video on an online platform, or any other communication made available to more than [100] persons.

(b) "Statement of material fact" means a statement, express or implied, of a fact that can be proven true or false and that a reasonable person would consider important in deciding how to act, including whether to pay money or transfer property, whether, when, where or how to vote or register to vote, and how to protect their health or safety.

(c) "Knowingly" means with actual knowledge that a statement is false, or with reckless disregard of whether it is false.

(d) "With intent to defraud" means with the purpose of obtaining money or property by means of a statement the person knows to be false.

(e) "Money or property" means anything of value, including a subscription fee, a purchase price, a donation, a contribution, a pledge, a membership fee and a payment for the distribution or carriage of a program.

(f) "Factual reporting" means a mass communication that a person offers or presents as an account of actual events, including news, news analysis, a documentary, an investigative report and a financial or market newsletter.

(g) "Paid political communication" means a mass communication, or a statement in one, that a person makes or distributes for compensation, or pays to have made or distributed, about a candidate, an election, a ballot measure, a public official's conduct in office, or the content or effect of a law or government action.

(h) "Person" means an individual, corporation, limited liability company, partnership, association, trust or other entity.

(i) "Audience" means the persons who receive a mass communication.

Section 4. Prohibited acts

(a) Fraud by mass communication. A person may not, by means of a mass communication, knowingly make a false statement of material fact to obtain money or property from a member of the audience, whether for that person or for another person.

(b) Fraud in the sale of factual reporting. A person who sells access to factual reporting, or who is paid to produce or present factual reporting, may not knowingly present a false statement of

material fact in that reporting as true.

(c) Paid political deception. A person may not knowingly make or distribute a false statement of material fact in a paid political communication.

(d) Voter deception. A person may not, by means of a mass communication, knowingly make a false statement of material fact about the date, time, place or manner of an election, the qualifications for voting, the requirements for registering to vote, or the consequences of voting or registering, with intent to prevent or deter any person from voting or registering to vote.

(e) Fraud causing physical harm. A person who, by means of a mass communication, knowingly makes a false statement of material fact with intent that members of the audience act on it is liable under Sections 6 and 7 to each person who suffers physical harm in justifiable reliance on the statement.

(f) Those who direct or pay. A person who directs, solicits, pays for or knowingly gives substantial help to a violation of this section is liable for the violation as if that person committed it. A provider of an interactive computer service, as defined in 47 U.S.C. section 230(f), is liable under this section for a statement the provider itself makes, for a paid political communication it is paid to distribute, and for a statement it continues to distribute after the attorney general gives it written notice that a court has found the statement to violate this act, to the extent federal law allows.

(g) Separate violations. Each statement made in violation of this section is a separate violation, and so is each day the statement remains available to the audience after the person who made it knows it is false.

(h) Protected expression. This section does not reach an opinion, a position on a disputed question of law, a prediction, satire, parody, hyperbole, or a statement a reasonable person would not understand as stating an actual fact, and it does not reach a statement made without knowledge of its falsity or reckless disregard of its truth.

Section 5. Investigations by the attorney general

(a) When the attorney general has reason to believe that a person has violated this act or is about to violate it, the attorney general may investigate before filing any action.

(b) In the investigation, the attorney general may subpoena any person, compel the person's attendance, take testimony under oath and require the production of records, recordings, scripts, contracts, internal messages and any other document the attorney general considers relevant.

(c) If a person fails to obey a subpoena, the [court] shall order compliance on the attorney general's application, and failure to obey the order is contempt.

(d) Testimony and documents obtained under this section stay confidential until the attorney general uses them in an action or proceeding.

(e) A person who refuses to testify or produce documents on the ground that doing so may incriminate the person may be compelled to do so only under a grant of immunity under [the state immunity statute], and the attorney general shall notify [the prosecuting attorney] before seeking the grant.

(f) This section does not require a person to identify a confidential source.

Section 6. Civil enforcement

(a) The attorney general may bring an action in [court] against any person who has violated this act, to enjoin the person from continuing the practice and for the relief in subsection (b).

(b) In the action, the court may order:

1. restitution to every person from whom money or property was obtained through the violation;

2. disgorgement of all revenue the defendant received from the mass communication in which the violation occurred, including subscription, distribution, carriage and advertising revenue;

3. a civil penalty of up to $[25,000] for each violation;

4. restitution to each person physically harmed in reliance on a statement made in violation of Section 4(e); and

5. any other relief needed to stop the violation and prevent it from recurring.

(c) The attorney general need not prove that any member of the audience relied on the statement or lost money.

(d) An individual who knowingly makes, writes, directs or approves a statement in violation of this act is personally liable for the relief ordered under subsection (b), jointly and severally with any entity for which the individual acted.

(e) Money disgorged under this section and not paid as restitution goes to [the state consumer protection fund].

(f) The standard of proof in an action under this section or Section 7 is a preponderance of the evidence.

Section 7. Private actions

(a) A person from whom money or property was obtained through a violation of Section 4(a) may sue any person liable for the violation and recover three times the money or property obtained, or $[1,000], whichever is greater.

(b) A person who paid for access to factual reporting during a period in which it contained a violation of Section 4(b) may sue any person liable for the violation and recover three times the amount paid for that period, or $[1,000], whichever is greater.

(c) A person who received a statement made in violation of Section 4(c) or 4(d) may sue any person liable for the violation and recover statutory damages of $[1,000] for each statement received.

(d) A person who suffers physical harm in justifiable reliance on a statement made in violation of Section 4(e), or the [personal representative] of a person who dies, may sue any person liable for the violation and recover three times the damages [the state's personal injury and wrongful death laws] allow.

(e) A court shall award reasonable attorney fees and costs to a prevailing plaintiff under this section, and to a prevailing defendant when the court finds the action frivolous or brought to harass. An action under this section may proceed as a class action. The plaintiff shall serve a copy of the complaint on the attorney general when filing it, and the attorney general may intervene in the action or take it over at any time.

Section 8. Criminal penalties

(a) A person who violates Section 4(a) or 4(b) with intent to defraud is guilty of:

1. a [class A misdemeanor] when the money or property obtained through the violation is $[1,000] or less;

2. a [class E felony] when it exceeds $[1,000];

3. a [class C felony] when it exceeds $[100,000]; and

4. a [class B felony] when it exceeds $[1,000,000].

(b) The money or property obtained through violations committed as part of one course of conduct is added together to set the grade under subsection (a).

(c) A person who violates Section 4(c) or 4(d) is guilty of a [class E felony], or a [class D felony] when the mass communication reached more than [1,000] persons.

(d) A person who commits [five] or more violations of Section 4 within [two] years as part of a systematic course of conduct is guilty of one grade higher than subsection (a) or (c) provides, and the court shall impose a term of imprisonment of at least [one year].

(e) An entity convicted under this section may be fined up to $[1,000,000] for each offense, or twice the money or property obtained through the offense, whichever is greater.

(f) The attorney general, and the [prosecuting attorney] of any [county] in which the mass communication was received, may prosecute a violation of this act.

Section 9. Time limits

An action or prosecution under this act may begin within [six] years after the violation is discovered or reasonably could have been discovered, and no more than [ten] years after the violation.

Section 10. Jurisdiction and venue

This act applies to a mass communication received by a person in this state. A mass communication received in this state is made in this state, and an action or prosecution under this act may be brought in any [county] in which it was received.

Section 11. Other remedies

The remedies in this act add to every other remedy available under the law of this state, including an action for defamation and an action under [the state consumer protection act].

Section 12. Severability

If a court holds any provision of this act, or its application to any person or circumstance, invalid, the remaining provisions and applications stay in effect.

Section 13. Effective date

This act takes effect [90] days after it becomes law.

Drafter's notes

The act applies to mass communication the standards every other market already lives under. A stockbroker who misstates a material fact answers to the Martin Act, New York General Business Law sections 352 to 353 (https://www.nysenate.gov/legislation/laws/GBS/A23-A), under which the attorney general investigates before suing, recovers money without proving that any investor relied on the statement, and prosecutes without proving intent, People v. Federated Radio Corp., 244 N.Y. 33 (1926). A seller who misstates a material fact in an advertisement answers to the Federal Trade Commission Act and to every state's consumer protection act, which count each day of a deceptive practice as a separate violation and require no proof that any customer relied. A company whose officers lie to the market answers to every investor who bought during the period of the lie, without each investor proving they heard it, Basic Inc. v. Levinson, 485 U.S. 224 (1988) (https://supreme.justia.com/cases/federal/us/485/224/). A robocaller answers to each recipient for statutory damages under 47 U.S.C. section 227. A person who causes physical harm by a fraudulent misrepresentation answers to the person harmed, Restatement (Second) of Torts section 557A. Political communication is the one market with no such rule, and the act ends that exemption.

Section 4(a) is the fraud rule the Supreme Court restated in United States v. Alvarez, 567 U.S. 709 (2012) (https://supreme.justia.com/cases/federal/us/567/709/): a false statement made to obtain money is fraud, and fraud has never had First Amendment protection. Section 4(b) treats factual reporting as the product it is sold as; a knowing falsehood in it is a deceptive practice in trade, the same as a false label on a product. Section 4(c) applies the false advertising rule to paid political communication. Section 4(d) applies the rule in Minnesota Voters Alliance v. Mansky, 585 U.S. 1, 18 n.4 (2018), that a state may prohibit messages intended to mislead voters about voting requirements and procedures. Section 4(e) enacts Restatement section 557A. Section 4(h) is the line the act draws: opinion, commentary, legal argument, prediction, satire and honest error stay outside it, because every section requires actual knowledge of falsity or reckless disregard, the standard of New York Times Co. v. Sullivan, 376 U.S. 254 (1964), which Garrison v. Louisiana, 379 U.S. 64 (1964), applied to criminal statutes.

The act reaches any person who makes the statement, whatever the medium or profession. Laws of general application bind the press as they bind anyone else, Cohen v. Cowles Media Co., 501 U.S. 663 (1991). Herbert v. Lando, 441 U.S. 153 (1979), held that the First Amendment allows inquiry into a publisher's editorial process when a case requires proof that the publisher knew a statement was false, and Section 5(f) keeps confidential sources protected. Section 8 grades felonies by amount, building on the Martin Act's class E felonies for intentional fraud in General Business Law section 352-c(5) and (6), and Section 8(d) adds the course-of-conduct grade for a systematic campaign. Section 8(f) gives the attorney general the criminal authority New York's attorney general holds under General Business Law section 358 (https://www.nysenate.gov/legislation/laws/GBS/358).

Courts have struck earlier laws in this field, and the act is written to the reasons they gave. The Washington Court of Appeals in 2021 affirmed the dismissal of a Consumer Protection Act claim over Fox News's pandemic coverage (https://firstamendment.mtsu.edu/post/dismissal-of-consumer-protection-suit-against-fox-news-affirmed/); that claim required no proof that anyone knew a statement was false, and every section of this act requires that proof. The Supreme Court in Alvarez struck a law that punished a lie with no money taken, no harm done and no audience deceived; Sections 4(a), (b), (c) and (e) each tie the lie to money, a sale, a paid message or an injury. On Aug. 20, 2026, the Eighth Circuit held Minnesota's voter deception law likely unconstitutional as applied to a group's disputed reading of who may vote, and held that the law's orders against speech before it occurs are prior restraints, Minnesota Voters Alliance v. Ellison, No. 24-3094 (https://law.justia.com/cases/federal/appellate-courts/ca8/24-3094/24-3094-2026-08-20.html); Section 4(h) leaves a position on a disputed question of law outside the act, and Section 6(a) reaches only a practice already under way.

Any legislature can pass the same text, and an attorney general hostile to a newsroom could try to use it. The knowledge requirement is the protection, and federal courts already stop investigations brought to punish reporting: the D.C. Circuit upheld an injunction blocking Texas

Attorney General Ken Paxton's investigation of Media Matters for America as likely First Amendment retaliation (https://www.mediapost.com/publications/article/406268/court-upholds-block-on-texas-ags-probe-of-media-m.html). A court must award fees to a defendant sued to harass.

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