



First Draft of Report #45 –  
Fraudulent Advertising  
&  
Fraudulent Registration

SUBMITTED FOR ADVISORY GROUP REVIEW  
November 20, 2019

DISTRICT OF COLUMBIA CRIMINAL CODE REFORM COMMISSION  
441 FOURTH STREET, NW, SUITE 1C001 SOUTH  
WASHINGTON, DC 20001  
PHONE: (202) 442-8715  
[www.ccrdc.dc.gov](http://www.ccrdc.dc.gov)

First Draft of Report #45 –Fraudulent Advertising and Fraudulent Registration

This Draft Report contains recommended reforms to District of Columbia criminal statutes for review by the D.C. Criminal Code Reform Commission’s statutorily designated Advisory Group. A copy of this document and a list of the current Advisory Group members may be viewed on the website of the D.C. Criminal Code Reform Commission at [www.ccrdc.dc.gov](http://www.ccrdc.dc.gov).

Any Advisory Group member may submit written comments on any aspect of this Draft Report to the D.C. Criminal Code Reform Commission. The Commission will consider all written comments that are timely received from Advisory Group members. Additional versions of this Draft Report may be issued for Advisory Group review, depending on the nature and extent of the Advisory Group’s written comments. The D.C. Criminal Code Reform Commission’s final recommendations to the Council and Mayor for comprehensive criminal code reform will be based on the Advisory Group’s timely written comments and approved by a majority of the Advisory Group’s voting members.

The deadline for the Advisory Group’s written comments on this First Draft of Report #29 – Fraudulent Advertising & Fraudulent Registration is Wednesday, January 15, 2020. Oral comments and written comments received after this date may not be reflected in the next draft or final recommendations. All written comments received from Advisory Group members will be made publicly available and provided to the Council on an annual basis.

The Commission recommends the repeal of D.C. Code § 22-1511, which criminalizes fraudulent advertising, and D.C. Code §§ 22-1512 and 22-1513, which specify prosecutorial authority and relevant penalties for the offense.

## COMMENTARY

### *Explanatory Note and Relation to Current District Law*

Current D.C. Code § 22-1511 provides:

It shall be unlawful in the District of Columbia for any person, firm, association, corporation, or advertising agency, either directly or indirectly, to display or exhibit to the public in any manner whatever, whether by handbill, placard, poster, picture, film, or otherwise; or to insert or cause to be inserted in any newspaper, magazine, or other publication printed in the District of Columbia; or to issue, exhibit, or in any way distribute or disseminate to the public; or to deliver, exhibit, mail, or send to any person, firm, association, or corporation any false, untrue, or misleading statement, representation, or advertisement with intent to sell, barter, or exchange any goods, wares, or merchandise or anything of value or to deceive, mislead, or induce any person, firm, association, or corporation to purchase, discount, or in any way invest in or accept as collateral security any bonds, bill, share of stock, note, warehouse receipt, or any security; or with the purpose to deceive, mislead, or induce any person, firm, association, or corporation to purchase, make any loan upon or invest in any property of any kind; or use any of the aforesaid methods with the intent or purpose to deceive, mislead, or induce any other person, firm, or corporation for a valuable consideration to employ the services of any person, firm, association, or corporation so advertising such services.

Repealing the fraudulent advertising statute in D.C. Code § 22-1511 will decriminalize little conduct because nearly all such conduct is already prohibited under the District’s current fraud statute<sup>1</sup> and will be criminalized by the RCC fraud statute.<sup>2</sup> The revised fraud statute criminalizes taking, obtaining, transferring, or exercising control over property, with the consent of the owner obtained by deception.<sup>3</sup> However, repealing the fraudulent advertising statute does narrow current District law in one or two minor ways.

---

<sup>1</sup> D.C. Code § 22-3221. (“A person commits the offense of fraud in the second degree if that person engages in a scheme or systematic course of conduct with intent to defraud or to obtain property of another by means of a false or fraudulent pretense, representation, or promise.”)

<sup>2</sup> RCC § 22E-2201. A person commits fraud when that person “Knowingly takes, obtains, transfers, or exercises control over the property of another; (2) With the consent of an owner obtained by deception; (3) With intent to deprive that owner of the property[.]”

<sup>3</sup> RCC § 22E-2201.

First, the fraudulent advertising statute differs from the RCC’s fraud statute in that the fraudulent advertising statute covers conduct “with intent to sell, barter, or exchange any goods, wares, or merchandise or anything of value.” Consequently, the current fraudulent advertising statute does not require that the actor actually succeeded in defrauding anyone.<sup>4</sup> In contrast, the RCC’s fraud statute requires that the actor actually takes, obtains, transfers, or exercises control over property. However, the RCC fraud statute still criminalizes conduct an actor who is unsuccessful in defrauding anyone through the use of deceptive advertising if the conduct is sufficiently close to success that it constitutes an attempt.<sup>5</sup>

Second, the fraudulent advertising statute differs from the RCC’s fraud statute in that the fraudulent advertising statute is silent as to whether it includes advertising with immaterial misleading statements or puffery. The plain language seems to suggest even the most trivial, ineffective, or clearly outrageous claims could satisfy the elements of the offense, and there is no relevant D.C. Court of Appeals case law. However, the revised fraud offense specifically excludes liability for such minimal harms by requiring the property of another be obtained by means of “deception” and defining “deception” as “creating or reinforcing a *material* false impression,” and excludes “puffing statements unlikely to deceive ordinary persons[.]”<sup>6</sup> Consequently, to the extent that the fraudulent advertising statute includes displaying advertising that includes immaterial misrepresentations<sup>7</sup> or mere puffery<sup>8</sup>, repealing the statute would decriminalize this conduct.

Repealing the fraudulent advertising statute eliminates unnecessary overlap, and improves the proportionality and consistency of the revised criminal code.

---

<sup>4</sup> See, *Green v. United States*, 312 A.2d 788, 791 (D.C. 1973) (evidence for fraudulent advertising sufficient even without proof that any customers actually purchased falsely advertised goods).

<sup>5</sup> RCC § 22E-301.

<sup>6</sup> RCC § 22E-701 (emphasis added).

<sup>7</sup> For example, if an alcohol vendor advertises liquor as being 50% alcohol by volume, but the liquor is actually only 49.9% alcohol by volume, this immaterial misrepresentation could arguably constitute fraudulent advertising.

<sup>8</sup> For example, if the owner of a diner displays an advertisement that says “world’s best coffee,” when the diner’s coffee is not actually the best coffee in the entire world, these puffing statements would not constitute deception as defined in the RCC, but could arguably constitute fraudulent advertising.

The Commission recommends the repeal of D.C. Code § 22-3224, which criminalizes fraudulent registration at a hotel, motel, or other lodging establishment.

### COMMENTARY

Current D.C. Code § 22-3224 provides: “A person commits the offense of fraudulent registration if, with intent to defraud the proprietor or manager of a hotel, motel, or other establishment which provides lodging to transient guests, that person falsely registers under a name or address other than his or her actual name or address.” This conduct may still be criminalized under the RCC’s fraud<sup>9</sup> statute. Repealing the fraudulent registration statute may change current District law in two ways.

Repealing the fraudulent registration statute in D.C. Code § 22-3224 will decriminalize little conduct because nearly all such conduct is already prohibited under the District’s current fraud statute<sup>10</sup> and will be criminalized by the RCC fraud<sup>11</sup> statutes. The revised fraud statute criminalizes taking, obtaining, transferring, or exercising control over property, with the consent of the owner obtained by deception.<sup>12</sup> However, repealing the fraudulent registration statute does narrow current District law in one or two minor ways.

First, the fraudulent registration statute does not require that the actor actually defrauded the proprietor or manager of the hotel. The offense only requires registering under a false name or address, with *intent* to defraud. Consequently, the current fraudulent registration statute does not require that the actor actually succeeded in defrauding anyone. A person who provides a false name or address, but does not actually use the hotel room without payment would be guilty of fraudulent registration. In contrast, the RCC’s fraud statute requires that the actor actually takes, obtains, transfers, or exercises control over property. However, the RCC fraud statute still criminalizes conduct an actor who is unsuccessful in defrauding anyone through the use of deceptive registration if the conduct is sufficiently close to success that it constitutes an attempt.<sup>13</sup>

Second, the fraudulent registration statute does not define the term “defraud.” Using a false name or address to obtain a hotel room without paying for it would constitute fraud or theft of services<sup>14</sup> under the RCC. However, since the term “defraud” is undefined, it is unclear if the fraudulent registration statute covers cases where a person provides a false name or address to

---

<sup>9</sup> RCC § 22E-2201.

<sup>10</sup> D.C. Code § 22-3221. (“A person commits the offense of fraud in the second degree if that person engages in a scheme or systematic course of conduct with intent to defraud or to obtain property of another by means of a false or fraudulent pretense, representation, or promise.”)

<sup>11</sup> RCC § 22E-2201. (A person commits fraud when that person “Knowingly takes, obtains, transfers, or exercises control over the property of another; (2) With the consent of an owner obtained by deception; (3) With intent to deprive that owner of the property[.]”).

<sup>12</sup> RCC § 22E-2201.

<sup>13</sup> RCC § 22E-301.

<sup>14</sup> RCC § 22E-2101

deceive the manager or proprietor of the hotel, but still intends to pay for the room. If the fraudulent registration offense includes use of a false name or address, even when the actor intends to pay for the room, repealing the statute would decriminalize this conduct.

Repealing the fraudulent registration statute eliminates unnecessary overlap, and improves the proportionality and consistency of the revised criminal code.