

4. Sells or otherwise transfers or encumbers property without disclosing a lien, security interest, adverse claim, or other legal impediment to the enjoyment of the property, whether the lien, security interest, claim, or impediment is or is not valid or is or is not a matter of official record; or
5. Promises performance that is likely to affect the judgment of another in the transaction, which performance the actor does not intend to perform or knows will not be provided, however, that failure to perform the promise in issue without other evidence of intent or knowledge is not sufficient proof that the actor did not intend to perform or knew the promise would not be performed.

13-640-2. PRESUMPTIONS AND DEFENSES. The following presumption shall be applicable to this part:

- A. Possession of property recently stolen, when no satisfactory explanation of such possession is made, shall be deemed prima facie evidence that the person in possession stole the property.
- B. It is no defense under this part that the actor has an interest in the property or service stolen if another person also has an interest that the actor is not entitled to infringe, provided an interest in property for purposes of this subsection shall not include a security interest for the repayment of a debt or obligation.
- C. It is a defense under this part that the actor:
 1. Acted under an honest claim of right to the property or service involved; or
 2. Acted in the honest belief that he had the right to obtain or exercise control over the property or service as he did; or
 3. Obtained or exercised control over the property or service honestly believing that the owner, if present, would have consented.

13-640-3. THEFT — EVIDENCE TO SUPPORT ACCUSATION. Conduct denominated theft in this part constitutes a single offense embracing the separate offenses as those heretofore known as larceny, larceny by trick, larceny by bailees, embezzlement, false pretense, extortion, blackmail, and receiving stolen property. An accusation of theft may be supported by evidence that it was committed in any manner specified in sections 13-640-4 through 13-640-10 subject to the power of the court to ensure a fair trial by granting a continuance or other appropriate relief where the conduct of the defense would be prejudiced by lack of fair notice or by surprise.

13-640-4. THEFT — ELEMENTS. A person commits theft if he obtains or exercises unauthorized control over the property of another with a purpose to deprive him thereof.

13-640-8. RECEIVING STOLEN PROPERTY — DUTIES OF PAWNBROKERS.

- A. A person commits theft if he receives, retains, or disposes of the property of another knowing that it has been stolen, or believing that it probably has been stolen, or who conceals, sells, withholds or aids in concealing, selling, or withholding any such property from the owner, knowing the property to be stolen, with a purpose to deprive the owner thereof.
- B. The knowledge or belief required for paragraph A is presumed in the case of an actor who:
1. Is found in possession or control of other property stolen on a separate occasion; or
 2. Has received other stolen property within the year preceding the receiving offense charged; or
 3. Being a dealer in property of the sort received, retained or disposed, acquires it for a consideration which he knows is far below its reasonable value.
 4. Every pawnbroker or person who has or operates a business dealing in or collecting used or secondhand merchandise or personal property, and every agent, employee or representative of the pawnbroker or person who buys, receives or obtains property shall require the seller or person delivering the property to certify, in writing, that he has the legal rights to sell the property. If the value given for the property exceeds \$20.00, the pawnbroker or person shall also require the seller or person delivering the property to obtain a legible print, preferably the right thumb, at the bottom of the certificate next to his signature or any other positive form of identification:
 - (a) Every pawnbroker or person who has or operates a business dealing in or collecting used or secondhand merchandise or personal property, and every agent, employee or representative of the pawnbroker or person who fails to comply with the requirements of paragraph number four shall be presumed to have bought, received or obtained the property knowing it to have been stolen or unlawfully obtained. This presumption may be rebutted by proof.
 - (b) When in a prosecution under this section it appears from the evidence that the defendant was a pawnbroker or a person who has or operates a business dealing in or collecting used or secondhand merchandise or personal property, or was an agent, employee or representative of a pawnbroker or person, that the defendant bought, received, concealed or withheld the property without requiring the person from whom he bought, received, or obtained the property to sign the certificate required in paragraph 4 and in the event the transaction involves an amount exceeding \$20.00 also place his legible print, preferably the right thumb, on the certificate, then the burden shall be upon the defendant to show that the property bought, received or obtained was not stolen.

- B. Liability under paragraph A is not affected by the fact that it may be impossible to identify particular property as belonging to the victim at the time of the failure to make the required payment or disposition.
- C. An officer or employee of the government or of a financial institution is presumed:
 - 1. To know of any legal obligation relevant to his liability under this section; and
 - 2. To have dealt with the property as his own if he fails to pay or account upon lawful demand, or if an audit reveals a shortage or falsification of his accounts.
- D. As used in this section:
 - 1. "Financial institution" means a bank, insurance company, credit union, safety deposit company, savings and loan association, investment trust, or other organization held out to the public as a place of deposit of funds or medium of savings or collective investment.
 - 2. "Government" means the United States, any state or any 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 formed pursuant to interstate compact or international treaty.

13-640-12. THEFT—CLASSIFICATION OF OFFENSES.

Theft of property and services as provided in this chapter shall be punishable as a class B misdemeanor.