Mr Speaker,

I wish to inform this Honourable House of Government’s intention to update and modernize Bermuda’s laws relating to fraud.

As with tackling bribery and corruption, responding effectively to fraud is a priority for Government. This, we will do, by bringing forward legislation which is based on the United Kingdom’s Fraud Act 2006.
Mr Speaker,

I am sure that Honourable Members will agree that fraud is something which we should not tolerate.

As is the case with our parallel efforts to combat bribery and corruption, by updating and modernizing the law of fraud in Bermuda, we are sending a strong signal to the rest of the world that economic crime of any kind will not be tolerated.

Mr Speaker,

Fraud is presently prosecuted through a number of deception offences in the Criminal Code. These offences were originally found in the UK’s Theft Acts of 1968 and 1978. They were introduced in Bermuda in 2005. However, those amendments
had the effect of narrowing the crime of fraud and of introducing a technical approach to the law which the UK itself was moving away from. The next year, in 2006, those offences were repealed when the UK Fraud Act came into force. As with that jurisdiction’s Bribery Act, the Fraud Act represents an international gold standard.

Mr Speaker,

The former UK deception offences, which remain in Bermuda’s legislation, were long criticized in the UK.

In 1997, the then Solicitor General for England & Wales stated that “the modern sorts of commercial activity, and the modern methods by which dishonest activity may be effected make one constantly worried that the unoverhauled bus may not be able to cope.”
In 1998, the then UK Home Secretary asked the English Law Commission the following:

As part of their programme of work on dishonesty, to examine the law on fraud, and in particular to consider whether it: is readily comprehensible to juries; is adequate for effective prosecution; is fair to potential defendants; meets the need of developing technology including electronic means of transfer; and to make recommendations to improve the law in these respects with all due expedition. In making these recommendations to consider whether a general offence of fraud would improve the criminal law.

The Commission had already been considering reforming the law of fraud intermittently since the 1970s. The Commission produced a report in 2002 with accompanying specimen legislation which ultimately became the Fraud Act 2006. Honourable members will recall that the Law Commission comprises the best and brightest legal academics in England &
Wales. As with bribery, we are fortunate to benefit from those efforts without having to retread much of the same ground.

Mr Speaker

The Law Commission made a number of criticisms about the previous deception offences then in force in the United Kingdom and presently in force in Bermuda. They considered that a new Fraud Act containing a general offence of fraud would improve the criminal law. If Honourable Members would indulge me, Mr Speaker, let me just read from the executive summary of the Commission’s Report:

(1) A general offence of fraud should make the law more comprehensible to juries, especially in serious fraud trials. The charges which are currently employed in such trials are numerous, and none of them adequately describe or encapsulate the meaning of “fraud”. [...] At present, juries are not given a straightforward definition of fraud. If they were, and
if that were the key to the indictment, it should enable them to focus more closely on whether the facts of the case fit the crimes as charged.

(2) A general offence of fraud would be a useful tool in effective prosecutions. Specific offences are sometimes wrongly charged, in circumstances when another offence would have been more suitable. This can result in unjustified acquittals and costly appeals. [...] A generalised crime which nonetheless provides a clear definition of fraudulent behaviour may assist prosecutors to weigh up whether they have a realistic chance of securing a conviction.

(3) Introducing a single crime of fraud would dramatically simplify the law of fraud. Clear, simple law is fairer than complicated, inaccessible law. If a citizen is contemplating activities which could amount to a crime, a clear, simple law gives better guidance on whether the conduct is criminal, and fairer warning of what could happen if it is. Furthermore, when a defendant is charged with a clear, simple law, they will be better able to understand their options when pleading to the
charge; and, if pleading not guilty, they will be better able to conduct their defence.

(4) A general offence of fraud would be aimed at encompassing fraud in all its forms. It would not focus on particular ways or means of committing frauds. Thus it should be better able to keep pace with developing technology.

Mr Speaker,

As with bribery and corruption laws, that the UK has moved away from those former laws leads to a separate problem which is peculiar to Bermuda. As prosecutions based on the old deception offences fade into memory, we will not stand to benefit from developing case-law through court decisions and appeals. It has now been 10 years since the UK courts were actively considering the deception offences which we use in Bermuda. Useful caselaw has not developed since, which
compounds the police and prosecution’s ability to respond to technological advances.

**Mr Speaker**

Government’s proposed Fraud Act would abolish the deception offences inherited from the UK. In their place, there would be a general offence of fraud together with four new specific offences – one of obtaining services dishonestly, two involving articles for use in fraud and one of participating in fraudulent business. The Act will help to enhance Bermuda’s international reputation for the highest ethical standards.

The **general offence of fraud** would be committed where, with intent to make a gain or to cause loss or to expose another to the risk of loss, a person dishonestly

(1) makes a false representation,
(2) wrongfully fails to disclose information, or
(3) abuses a position of trust.

The **offence of obtaining services dishonestly** would be committed where a person by any dishonest act obtains services in respect of which payment is required, with intent to avoid payment. Deception is not an essential element of the offence. It would therefore extend to the obtaining of services by providing false information to computers and machines, which under the present law may not amount to any offence at all.

The specific **offence of possession of articles for use in fraud** would be committed where a person has in their possession or under their control any article for use in the course of or in connection with any fraud.

The **offence of making or supplying articles for use in fraud** would be committed where a person makes, adapts, supplies or offers to supply any article
(1) knowing that it is designed or adapted for use in the course of fraud or in connection with fraud, OR
(2) intending that it be used to commit, or assist in the commission of, fraud.

The **offence of participating in a fraudulent business** would be committed where a person is knowingly a party to a business with intent to defraud any creditors and where that business would not be covered under similar offences in the Companies Act 1981.

These specific offences would complement the general offence of fraud and would likely be charged as alterative counts in any information or indictment.

**Mr Speaker,**
Any perusal of the UK Act will reveal that the offences are widely drawn. Fraud can take many different forms and any offence needs to take account of that. More importantly, technology continues to adapt and change rapidly. We must give the men and women of law enforcement the tools they need to combat this insidious form of economic crime. Our law must therefore be versatile. As with bribery, the UK’s Fraud Act represents an international gold standard to which Bermuda should aspire.

Government is rightly proud of its efforts to modernize the law on fraud. It is also proud of its efforts to promote Bermuda as a domicile of choice in which to do business. We look forward to continuing to update this Honourable House and the people of Bermuda on all efforts in this regard.

Thank you.