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Amending 40-14-20 and 40-5-205, Colorado Revised Statutes 1963, as Amended, Concerning the Issuance of Bad Checks, and Defining the Crime of Fraud by Check.

Colorado General Assembly

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CHAPTER 48

CRIMINAL CODE

FRAUD BY CHECK

HOUSE BILL NO. 1116 BY REPRESENTATIVES Cole, Black, Bishop, Byerly, Chestnut, Edmonds, Johnson, Koster, McCormick, Miller, Mumson, Pepper, Dunham, Schäfer, Sonnenberg, Stonebraker and Strahl; also SENATORS Stockton, Plack, Birmingham, Anderson, DeBerard, Kogovsek, Olson, Strickland, and Vollack.

AN ACT

AMENDING 40-14-20 AND 40-5-205, COLORADO REVISED STATUTES 1963, AS AMENDED, CONCERNING THE ISSUANCE OF BAD CHECKS, AND DEFINING THE CRIME OF FRAUD BY CHECK.

Be it enacted by the General Assembly of the State of Colorado:

Section 1. 40-14-20, Colorado Revised Statutes 1963, as amended by section 1 of chapter 48, Session Laws of Colorado 1970, is REPEALED AND REENACTED, WITH AMENDMENTS, to read:

40-14-20. Fraud by check — definitions — penalties. (1) The following definitions are applicable to this section:

(a) "Check" means a written, unconditional order to pay a sum certain in money, drawn on a bank, payable on demand, and signed by the drawer.

(b) "Deceitfully issues". A person deceitfully issues a check when, at the time he issues it, he has the intent to defraud or deceive any other person and thereby obtains from any other person money, property, or any other thing of value, tangible or intangible.

(c) "Drawee" means the bank or purported bank upon which a check is drawn.

(d) "Drawer" means a person, either real or fictitious, whose name appears on a check as the primary obligor, whether the actual signature be that of himself or of a person authorized to draw the check in his behalf.

(e) "Insufficient funds". A drawer has insufficient funds with the drawee to pay a check when the drawer has no checking account with the drawee, or has funds in a checking account with the drawee in an amount less than the amount of the check plus the amount of all other checks out-

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

standing at the time of issuance; and a check dishonored for "no account" shall also be deemed to have been dishonored for "insufficient funds".

(f) "Issue". A person issues a check when he makes, draws, delivers, or passes it or causes it to be made, drawn, delivered, or passed.

(2) Any person who deceitfully issues a check which is not paid because the drawer has insufficient funds with the drawee issues a fraudulent check and commits fraud by check.

(3) Fraud by check is:

(a) A misdemeanor, punishable by imprisonment in the county jail for not less than three months nor more than twelve months or by a fine of not less than two hundred-fifty dollars nor more than one thousand dollars or by both such fine and imprisonment, if the check was in the sum of less than fifty dollars;

(b) A felony if the fraudulent check was for the sum of fifty dollars or more or if the offender is convicted of fraud by check involving two or more checks within any thirty-day period in the state of Colorado totaling fifty dollars or more in the aggregate, in which cases the felony is punishable by imprisonment in the state penitentiary for not less than one year nor more than five years, or by a fine of not less than one thousand nor more than fifteen thousand dollars, or by both such fine and imprisonment;

(c) A felony if the offender has been twice previously convicted under this section or a former statute of this state of similar content and purport, in which case the felony is punishable by imprisonment in the state penitentiary for not less than one year nor more than ten years, or by a fine of not less than two thousand dollars nor more than thirty thousand dollars, or by both such fine and imprisonment.

(4) Any person having acquired rights with respect to a check which is not paid because the drawer has insufficient funds, shall have standing to file a complaint under this section, whether or not he is the payee, holder, or bearer of such check.

(5) If a person institutes or causes to be instituted a prosecution for violation of this section and shall thereafter fail to cooperate in the full prosecution of the alleged offender without reasonable cause, the court having jurisdiction, on motion of the prosecuting attorney appearing therein, and after notice to such person and an opportunity to be heard, may give judgment against such person and in favor of the county where prosecution was commenced, for all costs of the prosecution, including a reasonable allowance for the time of the prosecuting attorney.

(6) If deferred prosecution is ordered, the court as a condition of supervision may require the defendant to make restitution on all checks issued by the defendant which are unpaid as of the date of commencement of the supervision in addition to other terms and conditions appropriate for the treatment or rehabilitation of the defendant.

(7) A bank shall not be civilly or criminally liable for releasing information relating to the drawer's account to a sheriff, deputy sheriff, undersheriff, police officer, district attorney, assistant district attorney, deputy district attorney, or authorized investigator for a district attorney investigating or prosecuting a charge under this section.

Section 2. 40-5-205, Colorado Revised Statutes 1963, as amended by section 1 of chapter 121, Session Laws of Colorado 1971, is REPEALED AND REENACTED, WITH AMENDMENTS, to read:

40-5-205. Fraud by check — definitions — penalties. (1) The following definitions are applicable to this section:

(a) "Check" means a written, unconditional order to pay a sum certain in money, drawn on a bank, payable on demand, and signed by the drawer.

(b) "Deceitfully issues". A person deceitfully issues a check when, at the time he issues it, he has the intent to defraud or deceive any other person and thereby obtains from any other person money, property, or other thing of value.

(c) "Drawee" means the bank or purported bank upon which a check is drawn.

(d) "Drawer" means a person, either real or fictitious, whose name appears on a check as the primary obligor, whether the actual signature be that of himself or of a person authorized to draw the check in his behalf.

(e) "Insufficient funds". A drawer has insufficient funds with the drawee to pay a check when the drawer has no checking account with the drawee, or has funds in a checking account with the drawee in an amount less than the amount of the check plus the amount of all other checks outstanding at the time of issuance; and a check dishonored for "no account" shall also be deemed to have been dishonored for "insufficient funds".

(f) "Issue". A person issues a check when he makes, draws, delivers, or passes it or causes it to be made, drawn, delivered, or passed.

(2) Any person who deceitfully issues a check which is not paid because the drawer has insufficient funds with the drawee issues a fraudulent check and commits fraud by check.

(3) Fraud by check is:

(a) A class 2 misdemeanor if the check was in the sum of less than one hundred dollars;

(b) A class 5 felony if the fraudulent check was for the sum of one hundred dollars or more or if the offender is convicted of fraud by check involving two or more checks within any thirty-day period in the state of Colorado totaling one hundred dollars or more in the aggregate;

(c) A class 4 felony if the offender has been twice previously convicted

under this section or a former statute of this state of similar content and purport.

(4) Any person having acquired rights with respect to a check which is not paid because the drawer has insufficient funds, shall have standing to file a complaint under this section, whether or not he is the payee, holder, or bearer of such check.

(5) If a person institutes or causes to be instituted a prosecution for violation of this section and shall thereafter fail to cooperate in the full prosecution of the alleged offender without reasonable cause, the court having jurisdiction, on motion of the prosecuting attorney appearing therein, and after notice to such person and an opportunity to be heard, may give judgment against such person and in favor of the county where prosecution was commenced, for all costs of the prosecution, including a reasonable allowance for the time of the prosecuting attorney.

(6) If deferred prosecution is ordered, the court as a condition of supervision may require the defendant to make restitution on all checks issued by the defendant which are unpaid as of the date of commencement of the supervision in addition to other terms and conditions appropriate for the treatment or rehabilitation of the defendant.

(7) A bank shall not be civilly or criminally liable for releasing information relating to the drawer's account to a sheriff, deputy sheriff, undersheriff, police officer, district attorney, assistant district attorney, deputy district attorney, or authorized investigator for a district attorney investigating or prosecuting a charge under this section.

Section 3. Effective date. Section 2 of this act shall take effect on July 1, 1972, and the remainder of this act shall take effect on its passage.

Section 4. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Approved: May 10, 1972