

**§ 18-5-205. [Effective 3/1/2022] Fraud by check - definitions -
penalties**

(1) As used in this section, unless the context otherwise requires:

(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. "Check", for the purposes of this section only, also includes a negotiable order of withdrawal and a share draft.

(b) "Drawee" means the bank upon which a check is drawn or a bank, savings and loan association, or credit union on which a negotiable order of withdrawal or a share draft is drawn.

(c) "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 on himself.

(d) "Insufficient funds" means a drawer has insufficient funds with the drawee to pay a check when the drawer has no checking account, negotiable order of withdrawal account, or share draft account with the drawee or has funds in such an 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 be dishonored for "insufficient funds".

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

(f) "Negotiable order of withdrawal" and "share draft" mean negotiable or transferable instruments drawn on a negotiable order of withdrawal account or a share draft account, as the case may be, for the purpose of making payments to third persons or otherwise.

(g) "Negotiable order of withdrawal account" means an account in a bank or savings and loan association and "share draft account" means an account in a credit union, on which payment of interest or dividends may be made on a deposit with respect to which the bank or savings and loan association or the credit union, as the case may be, may require the depositor to give notice of an intended withdrawal not less than thirty days before the withdrawal is made, even though in practice such notice is not required and the depositor is allowed to make withdrawal by negotiable order of withdrawal or share draft.

(2) Any person, knowing he has insufficient funds with the drawee, who, with intent to defraud, issues a check for the payment of services, wages,

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salary, commissions, labor, rent, money, property, or other thing of value, commits fraud by check.

(3) Fraud by check is:

(a) (Deleted by amendment, L. 2007, p. 1693, 8, effective July 1, 2007.)

(a.5) [Repealed by 2021 amendment.]

(a.7) A petty offense if the fraudulent check was for less than three hundred dollars or if the offender is convicted of fraud by check involving the issuance of two or more checks within a sixty-day period in the state of Colorado totaling less than three hundred dollars in the aggregate;

(b) A class 2 misdemeanor if the fraudulent check was for the sum of three hundred dollars or more but less than one thousand dollars or if the offender is convicted of fraud by check involving the issuance of two or more checks within a sixty-day period in the state of Colorado totaling three hundred dollars or more but less than one thousand dollars in the aggregate;

(b.5) (Deleted by amendment, L. 2014.)

(c) A class 1 misdemeanor if the fraudulent check was for the sum of one thousand dollars or more but less than two thousand dollars or if the offender is convicted of fraud by check involving the issuance of two or more checks within a sixty-day period in the state of Colorado totaling one thousand dollars or more but less than two thousand dollars in the aggregate;

(d) A class 6 felony if the fraudulent check was for the sum of two thousand dollars or more but less than five thousand dollars or if the offender is convicted of fraud by check involving the issuance of two or more checks within a sixty-day period in the state of Colorado totaling two thousand dollars or more but less than five thousand dollars in the aggregate;

(e) A class 5 felony if the fraudulent check was for the sum of five thousand dollars or more but less than twenty thousand dollars or if the offender is convicted of fraud by check involving the issuance of two or more checks within a sixty-day period in the state of Colorado totaling five thousand dollars or more but less than twenty thousand dollars;

(f) A class 4 felony if the fraudulent check was for the sum of twenty thousand dollars or more but less than one hundred thousand dollars or if the offender is convicted of fraud by check involving the issuance of two or more checks within a sixty-day period in the state of Colorado totaling

twenty thousand dollars or more but less than one hundred thousand dollars;

(g) A class 3 felony if the fraudulent check was for the sum of one hundred thousand dollars or more but less than one million dollars or if the offender is convicted of fraud by check involving the issuance of two or more checks within a sixty-day period in the state of Colorado totaling one hundred thousand dollars or more but less than one million dollars;

(h) A class 2 felony if the fraudulent check was for the sum of one million dollars or more or if the offender is convicted of fraud by check involving the issuance of two or more checks within a sixty-day period in the state of Colorado totaling one million dollars or more; and

(i) A class 6 felony if the fraudulent check was drawn on an account which did not exist or which has been closed for a period of thirty days or more prior to the issuance of said check.

(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 the check.

(5) Any person who opens a checking account, negotiable order of withdrawal account, or share draft account using false identification or an assumed name for the purpose of issuing fraudulent checks commits a class 2 misdemeanor.

(6) If deferred prosecution is ordered, the court as a condition of supervision shall require the defendant to make restitution on all checks issued by the defendant that 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, savings and loan association, or credit union is not civilly or criminally liable for releasing information relating to the drawer's account to a sheriff, deputy sheriff, undersheriff, police officer, agent of the Colorado bureau of investigation, division of gaming investigator, division of lottery investigator, parks and outdoor recreation officer, Colorado wildlife officer, district attorney, assistant district attorney, deputy district attorney, or authorized investigator for a district attorney or the attorney general investigating or prosecuting a charge under this section.

(8) This section does not relieve the prosecution from the necessity of establishing the required culpable mental state. However, for purposes of

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this section, the issuer's knowledge of insufficient funds is presumed, except in the case of a postdated check or order, if:

(a) He has no account upon which the check or order is drawn with the bank or other drawee at the time he issues the check or order; or

(b) He has insufficient funds upon deposit with the bank or other drawee to pay the check or order, on presentation within thirty days after issue.

(9) Restitution for offenses described in this section may be collected as a condition of pretrial diversion by a district attorney, an employee of a district attorney's office, or a person under contract with a district attorney's office. Such collection is governed by the provisions of article 18.5 of title 16, C.R.S., and is not the collection of a debt.

(Amended by 2021 Ch. 462, §235, eff. 3/1/2022. Amended by 2014 Ch. 155, §2, eff. 8/6/2014. Amended by 2013 Ch. 282, §65, eff. 7/1/2013. L. 71: R&RE, p. 438, § 1. C.R.S. 1963: § 40-5-205. L. 72: p. 281, § 2. L. 75: (3) amended, p. 619, § 13, effective July 21. L. 77: (1), (2), (3)(b), (3)(c), and (5) R&RE and (3)(d) added, pp. 979, 980, §§ 1, 2, effective June 2. L. 80: (1)(a), (1)(b), (1)(d), (5), and (7) amended and (1)(f) and (1)(g) added, p. 539, § 1, effective April 13. L. 81: (3)(a), (3)(b), and (3)(c) amended and (8) added, p. 993, §§ 1, 2, effective July 1. L. 84: (3)(b) and (3)(c) amended, p. 538, § 12, effective July 1, 1985. L. 89: (3)(c) and (3)(d) amended, p. 834, § 55, effective July 1. L. 92: (3) amended, p. 435, § 6, effective April 10. L. 93: (3) amended, p. 971, § 1, effective July 1. L. 94: (7) amended, p. 1719, § 13, effective July 1. L. 98: (3)(b) and (3)(c) amended, p. 1438, § 15, effective July 1; (3)(b) and (3)(c) amended, p. 796, § 6, effective July 1. L. 2000: (6) amended, p. 1050, § 17, effective September 1. L. 2002: (9) added, p. 760, § 7, effective July 1. L. 2003: (7) amended, p. 1632, § 77, effective August 6. L. 2007: (3)(a), (3)(b), and (3)(c) amended and (3)(b.5) added, p. 1693, § 8, effective July 1. L. 2013: (1)(b), (1)(g), and (7) amended, (SB 13-154), ch. 282, p. 1487, § 65, effective July 1. L. 2014: (3) amended, (HB 14-1266), ch. 155, p. 535, § 2, effective August 6.)

2021 Ch. 462, was passed without a safety clause. See Colo. Const. art. V, § 1(3).

This section is set out twice. See also C.R.S. §18-5-2051, effective until 3/1/2022.

ANNOTATION

Law reviews. For comment on *Moore v. People* (124 Colo. 197, 235 P.2d 798 (1951)), see 24 *Rocky Mt. L. Rev.* 123 (1951). For note, "False Pretenses,

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Confidence Game, and Short Check in Colorado", see 25 Rocky Mt. L. Rev. 325 (1953). For article, "One Year Review of Criminal Law and Procedure", see 36 Dicta 34 (1959). For article, "Criminal Law", which discusses Tenth Circuit decisions dealing with bank crime, see 61 Den. L.J. 255 (1984).

Annotator's note. Since § 18-5-205 is similar to former § 40-14-20, C.R.S. 1963, and laws antecedent thereto, relevant cases construing those provisions have been included in the annotations to this section.

For history of section, see Moore v. People, 124 Colo. 197, 235 P.2d 798 (1951); People v. Gutierrez, 1 P.3d 241 (Colo. App. 1999).

This section gives fair warning of forbidden conduct so that men of common intelligence can understand the statute's meaning and application. People v. Quinn, 190 Colo. 534, 549 P.2d 1332 (1976).

For the unconstitutionality of subsection (2) before the 1977 amendment, see People v. Quinn, 190 Colo. 534, 549 P.2d 1332 (1976).

For the unconstitutionality of former version of section, see People v. Vinnola, 177 Colo. 405, 494 P.2d 826 (1972).

For the former definition of "insufficient funds" which was invalid, see People v. Vinnola, 177 Colo. 405, 494 P.2d 826 (1972).

Liability is imposed by the writing of the check, and not by a bank's subsequent failure to honor it. The language of the current statute satisfies the standard set out in People v. Vinnola (177 Colo. 405, 494 P.2d 826 (1972)), which would construe as constitutional a statute which "creates a crime when the drawer knows at the time of issuance that the check will not be paid". People v. Abbott, 638 P.2d 781 (Colo. 1981).

"Thing of value" construed. The right to possession and ownership of goods is a "thing of value" within the meaning of this section. People v. Kunzelman, 649 P.2d 340 (Colo. App. 1982).

Check must be written as payment for something of value. The requirement of subsection (2) that a check be for payment of "services, wages, salary, commissions, labor, rent, money, property, or other thing of value", means only that the check may be written as payment for anything of value, including the above-named items. People v. Abbott, 638 P.2d 781 (Colo. 1981).

District court erred in reasoning that defendant could not be convicted because she had not obtained "thing of value" in exchange for check when prosecution presented sufficient evidence for a jury to determine that the

short check was issued for "wages". People v. Steerman, 735 P.2d 876 (Colo. 1987).

The issuance of an insufficient funds check in payment, or partial payment, of a pre-existing debt can constitute fraud by check. The plain meaning of "for the payment of" is not limited to a contemporaneous exchange. The check need not induce the giving of things of value because a causal relationship between the issuance of the check and the act of obtaining the thing of value is no longer necessary. People v. Gutierrez, 1 P.3d 241 (Colo. App. 1999).

"Money" includes loan proceeds. Therefore, the payment of an outstanding loan is payment for "money". People v. Gutierrez, 1 P.3d 241 (Colo. App. 1999).

General rule that criminal intent will be presumed from commission of the unlawful act does not apply under this section, because the crime consists of the act combined with a specific intent, and proof of the commission of the act does not warrant any presumption that defendant had specific intent to defraud. Before the defendant can be convicted, it must be shown that he intended to defraud, and did defraud, the complaining witness. Moore v. People, 124 Colo. 197, 235 P.2d 798 (1951); Shreeves v. People, 126 Colo. 413, 249 P.2d 1020 (1952).

The law does not allow an intent to defraud to be presumed whenever a bank refuses to honor a check. People v. Kanan, 186 Colo. 255, 526 P.2d 1339 (1974).

Prosecution will not be permitted to utilize presumption of guilt as basis for obtaining conviction. People v. Kanan, 186 Colo. 255, 526 P.2d 1339 (1974).

Specific intent to defraud payee is necessary element of proof in the commission of this offense. People v. Meller, 185 Colo. 389, 524 P.2d 1366 (1974).

Specific intent to deceive must be demonstrated. This section requires the prosecution to demonstrate that the defendant formed a specific intent to deceive in order to sustain a verdict of guilty. People v. Kanan, 186 Colo. 255, 526 P.2d 1339 (1974).

Prosecution must prove drawer of check knew there were insufficient funds in his account to pay the check. People v. Kanan, 186 Colo. 255, 526 P.2d 1339 (1974).

Intent to defraud negated. The intent to defraud the payee would be conclusively negated if a defendant disclosed, at the time of the issuance of a check, that he did not have sufficient funds on deposit to cover the check. *People v. Meller*, 185 Colo. 389, 524 P.2d 1366 (1974).

Specific intent not negated by subsequent restitution. Neither the defendant's belated, partial payment of the check nor his promise to pay off the balance in the near future serves to negate, as a matter of law, probable cause to believe that the defendant had the specific intent to defraud when the check was issued. *People v. Taylor*, 655 P.2d 382 (Colo. 1982).

The fact that defendant at some time after the check was cashed attempted to make restitution, or tried to undo the wrong, is not a defense; nor does such conduct negate, as a matter of law, a finding of the specific intent to defraud. *People v. Nicholas*, 700 P.2d 921 (Colo. App. 1984).

It is the defendant's state of mind at the time of the issuance of the check which is determinative of his criminal liability for fraud by check, not his state of mind at some time subsequent to the completion of the transaction. The making of restitution in order to compensate a victim for a loss caused by the accused's past conduct is not a legal defense to a criminal charge based upon that conduct. *People v. Taylor*, 655 P.2d 382 (Colo. 1982).

Postdated check implies notice of insufficient funds. A postdated check, in the absence of a present representation that the check is good, carries on its face implied notice that the maker does not presently have sufficient funds on deposit to pay the check, but before this notice will be implied, the payee must be made aware that the check is, in fact, postdated. *People v. Meller*, 185 Colo. 389, 524 P.2d 1366 (1974); *People v. Abbott*, 638 P.2d 781 (Colo. 1981).

Function of jury to consider question of intent. In a prosecution for obtaining property by means of a worthless check, where defendant contended that he did not intend to defraud or deceive anyone by issuing a check on a bank in which he had no account, it was the function of the jury to pass on the question of intent from a consideration of all the testimony, and its verdict if amply supported by the evidence will not be disturbed. *Parrott v. People*, 144 Colo. 587, 357 P.2d 634 (1960).

Intent evidenced by absence of funds in bank. Where defendant passed a short check without resorting to any fraudulent scheme by which he sought to obtain the confidence of the complaining witness, and no special confidence was reposed in defendant, such case comes squarely within the terms of this section, if there was intent to defraud, which is clearly evidenced by the fact that defendant had no funds whatever in the

bank at the time he gave the check. *People v. Lindsay*, 119 Colo. 248, 202 P.2d 951 (1949).

Convictions for fraud by check vacated where jury instruction had the effect of removing the "knowing" element by creating a mandatory presumption that defendant knew he had insufficient funds to pay the check. Such an instruction violates due process by shifting the burden of producing evidence or the burden of persuasion on an essential element of the crime. *People v. Felgar*, 58 P.3d 1122 (Colo. App. 2002).

Probable cause to support crime. At a preliminary hearing, evidence that the defendant issued a check knowing that he had insufficient funds to pay the check, that he failed to deliver a trade-in vehicle as part payment for his purchase, and that he failed to take actions which would have placed funds into his account establishes probable cause to believe that the defendant had the intent to defraud at the time he issued the check. *People v. Spurrier*, 712 P.2d 486 (Colo. 1986).

Evidence of financial resources is relevant. Evidence that defendant's stepbrother had the financial ability to make an expected deposit into defendant's account, which would tend to corroborate in part defendant's testimony, is relevant in dealing with whether defendant had the specific intent to defraud. *Nora v. People*, 176 Colo. 454, 491 P.2d 62 (1971).

Evidence of plan, design, and scheme was material to show intent to defraud. *People v. Lindsay*, 119 Colo. 248, 202 P.2d 951 (1949).

The argument of a defendant convicted of issuing a check on a bank in which he did not have sufficient funds that the admission of evidence of other checks did not tend to prove intent, design, or motive in the commission of the charge being tried because of the remoteness of time of the other checks involved, is without merit where the checks were all passed within one month prior to the issuance of the check on which defendant was convicted. *Van Pelt v. People*, 173 Colo. 201, 476 P.2d 999 (1970).

Subsection (4) not limitation on filing felony actions. Subsection (4), giving specific authority for certain individuals to file a complaint, refers only to those persons who may file a complaint for petty offense or misdemeanor fraud by check and not to felony fraud by check, which is commenced by filing of a felony complaint. Thus, this provision does not operate to limit filing of complaints in felony actions to persons having acquired rights with respect to a check. *People v. Abbott*, 638 P.2d 781 (Colo. 1981).

Instruction on lesser included offense refused. The contention of defendant who was convicted of issuing a check for \$100 on a bank in which he did not have sufficient funds, that he was entitled to an instruction on the lesser included offense of issuing a short check under \$100, is without merit where in evidence was the check which on its face was for the sum of \$100; a check cannot be for a sum and under that sum at the same time. *Van Pelt v. People*, 173 Colo. 201, 476 P.2d 999 (1970).

Even though there was no proof as to the date the check was presented for collection and therefor the prosecution could not use the statutory presumption of knowledge, the prosecution's evidence was nonetheless sufficient to support a guilty verdict on a charge of fraud by check. *People v. Nicholas*, 700 P.2d 921 (Colo. App. 1984).

No expectation of privacy. In bad check cases, the drawer loses any expectation of privacy in the bank accounts being investigated and the banks were entitled to reveal the existence and status of such accounts to the government. *People v. Lopez*, 776 P.2d 390 (Colo. 1989); *People v. Selph*, 786 P.2d 1078 (Colo. 1989).

Applied in *People ex rel. Metzger v. District Court*, 119 Colo. 451, 208 P.2d 79 (1949); *Best v. People ex rel. Florum*, 121 Colo. 100, 212 P.2d 1007 (1949); *People ex rel. Metzger v. District Court*, 121 Colo. 141, 215 P.2d 327 (1949); *People v. Jones*, 176 Colo. 61, 489 P.2d 596 (1971); *White v. District Court*, 180 Colo. 152, 503 P.2d 342 (1972); *People v. Emig*, 191 Colo. 223, 552 P.2d 312 (1976); *Brennan v. Zapien*, 470 F. Supp. 1300 (D. Colo. 1979); *People v. Mason*, 643 P.2d 745 (Colo. 1982).

(1) For issuance of a bad check, see §18-5-512.

(2) For the legislative declaration contained in the 2007 act amending subsections (3)(a), (3)(b), and (3)(c) and enacting subsection (3)(b.5), see section 1 of chapter 384, Session Laws of Colorado 2007.