

CHAPTER 76**(SB 94)**

AN ACT relating to abuse of public trust.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

SECTION 1. A NEW SECTION OF KRS CHAPTER 522 IS CREATED TO READ AS FOLLOWS:

- (1) *A public servant who is entrusted with public money or property by reason of holding public office or employment, exercising the functions of a public officer or employee, or participating in performing a governmental function, is guilty of abuse of public trust when:*
 - (a) *He or she obtains public money or property subject to a known legal obligation to make specified payment or other disposition, whether from the public money or property or its proceeds; and*
 - (b) *He or she intentionally deals with the public money or property as his or her own and fails to make the required payment or disposition.*
- (2) *A public servant is presumed:*
 - (a) *To know any legal obligation relative to his or her criminal liability under this section; and*
 - (b) *To have dealt with the public money or property as his or her own when:*
 1. *He or she fails to account upon lawful demand; or*
 2. *An audit reveals a shortage or falsification of accounts.*
- (3) *Abuse of public trust is:*
 - (a) *A Class D felony if the value of the public money or property is less than ten thousand dollars (\$10,000);*
 - (b) *A Class C felony if the value of the public money or property is ten thousand dollars (\$10,000) or more, but less than one hundred thousand dollars (\$100,000); and*
 - (c) *A Class B felony if the value of the public money or property is one hundred thousand dollars (\$100,000) or more.*
- (4) *The judgment of conviction under this section shall recite that the offender is disqualified to hold any public office thereafter.*
- (5) *Conduct serving as the basis for the conviction of a public servant under this section shall not also be used to obtain a conviction of the public servant under KRS 514.070.*

Section 2. KRS 514.070 is amended to read as follows:

- (1) A person is guilty of theft by failure to make required disposition of property received when:
 - (a) He obtains property upon agreement or subject to a known legal obligation to make specified payment or other disposition whether from such property or its proceeds or from his own property to be reserved in equivalent amount; and
 - (b) He intentionally deals with the property as his own and fails to make the required payment or disposition.

- (2) The provisions of subsection (1) apply notwithstanding that it may be impossible to identify particular property as belonging to the victim at the time of the actor's failure to make the required payment or disposition.
- (3) An officer or employee of the government or of a financial institution is presumed:
 - (a) To know any legal obligation relevant to his criminal liability under this section; and
 - (b) To have dealt with the property as his own when:
 1. He fails to account or pay upon lawful demand; or
 2. An audit reveals a shortage or falsification of accounts.
- (4) Theft by failure to make required disposition of property received is a Class A misdemeanor unless the value of the property is three hundred dollars (\$300) or more, in which case it is a Class D felony.
- (5) *No person shall be convicted of theft by failure to make required disposition of property received when he or she has also been convicted of a violation of Section 1 of this Act arising out of the same incident.*

Section 3. The following KRS section is repealed:

61.190 Receiving profit on public funds -- Penalty.

Approved March 18, 2003