

514.040 Theft by deception.

- (1) A person is guilty of theft by deception when the person obtains property or services of another by deception with intent to deprive the person thereof. A person deceives when the person intentionally:
 - (a) Creates or reinforces a false impression, including false impressions as to law, value, intention, or other state of mind;
 - (b) Prevents another from acquiring information which would affect judgment of a transaction;
 - (c) Fails to correct a false impression which the deceiver previously created or reinforced or which the deceiver knows to be influencing another to whom the person stands in a fiduciary or confidential relationship;
 - (d) Fails to disclose a known lien, adverse claim, or other legal impediment to the enjoyment of property which the person transfers or encumbers in consideration for the property obtained, whether the impediment is or is not valid or is or is not a matter of official record; or
 - (e) Issues or passes a check or similar sight order for the payment of money, knowing that it will not be honored by the drawee.
- (2) The term "deceive" does not, however, include falsity as to matters having no pecuniary significance or puffing by statements unlikely to deceive ordinary persons in the group addressed.
- (3) Deception as to a person's intention to perform a promise shall not be inferred from the fact alone that he or she did not subsequently perform the promise.
- (4) For purposes of subsection (1) of this section, a maker of a check or similar sight order for the payment of money is presumed to know that the check or order, other than a postdated check or order, would not be paid, if:
 - (a) The maker had no account with the drawee at the time the check or order was issued; or
 - (b) Payment was refused by the drawee for lack of funds, upon presentation within thirty (30) days after issue, and the maker failed to make good within ten (10) days after receiving notice of that refusal. Notice of the refusal may include a citation to this section and a description of this section's criminal penalties and shall be deemed properly addressed when mailed to the address printed or written on the check or sight order or provided by the drawer or maker upon issuance of the check or sight order. The notice, if mailed, shall be deemed received by the addressee seven (7) days after it is placed in the United States mail. The notice may be sent by first-class mail if supported by an affidavit of service setting out the contents of the notice, the address to which the notice was mailed, that correct postage was applied, and the date the notice was placed in the United States mail. A maker makes good on a check or similar sight order for the payment of money by paying to the holder the face amount of the instrument, together with any merchant's posted bad check handling fee not to exceed fifty dollars (\$50) and any fee imposed pursuant to subsection (5) of this section.

- (5) If a county attorney issues notice to a maker that a drawee has refused to honor an instrument due to a lack of funds as described in subsection (4)(b) of this section, the county attorney may charge a fee to the maker of fifty dollars (\$50), if the instrument is paid. Money paid to the county attorney pursuant to this section shall be used only for payment of county attorney office operating expenses.
- (6) A person is guilty of theft by deception when the person issues a check or similar sight order in payment of all or any part of any tax payable to the Commonwealth knowing that it will not be honored by the drawee.
- (7) A person is guilty of theft by deception when the person issues a check or similar sight order in payment of all or any part of a child support obligation knowing that it will not be honored by the drawee.
- (8) Theft by deception is a Class B misdemeanor unless:
 - (a) The value of the property, service, or the amount of the check or sight order referred to in subsection (6) or (7) of this section is five hundred dollars (\$500) or more but less than one thousand dollars (\$1,000), in which case it is a Class A misdemeanor;
 - (b) The value of the property, service, or the amount of the check or sight order referred to in subsection (6) or (7) of this section is one thousand dollars (\$1,000) or more but less than ten thousand dollars (\$10,000), in which case it is a Class D felony;
 - (c) A person has three (3) or more convictions under paragraph (a) of this subsection within the last five (5) years, in which case it is a Class D felony. The five (5) year period shall be measured from the dates on which the offenses occurred for which the judgments of convictions were entered;
 - (d) The value of the property, service, or the amount of the check or sight order referred to in subsection (6) or (7) of this section is ten thousand dollars (\$10,000) or more, in which case it is a Class C felony: or
 - (e) The offense occurs during a declared emergency as defined by KRS 39A.020 arising from a natural or man-made disaster, within the area covered by the emergency declaration, and within the area impacted by the disaster, in which case the person shall be charged one (1) level higher than the level otherwise specified in this subsection.
- (9) If any person commits two (2) or more separate offenses of theft by deception within ninety (90) days, the offenses may be combined and treated as a single offense, and the value of the property in each offense may be aggregated for the purpose of determining the appropriate charge.

Effective: July 14, 2022

History: Amended 2022 Ky. Acts ch. 151, sec. 13, effective July 14, 2022; and ch. 178, sec. 3, effective July 14, 2022. -- Amended 2021 Ky. Acts ch. 66, sec. 9, effective June 29, 2021. -- Amended 2010 Ky. Acts ch. 160, sec. 17, effective July 15, 2010. -- Amended 2009 Ky. Acts ch. 106, sec. 7, effective June 25, 2009. -- Amended 2008 Ky. Acts ch. 84, sec. 1, effective July 15, 2008. -- Amended 2005 Ky. Acts ch. 180, sec. 1, effective June 20, 2005. -- Amended 2000 Ky. Acts ch. 410, sec. 1, effective July 14, 2000. -- Amended 1994 Ky. Acts ch. 330, sec. 21, effective July 15, 1994;

and ch. 465, sec. 1, effective July 15, 1994. – Amended 1992 Ky. Acts ch. 434, sec. 5, effective July 14, 1992; and ch. 451, sec. 2, effective July 14, 1992. -- Amended 1986 Ky. Acts ch. 207, sec. 1, effective July 15, 1986. -- Amended 1982 Ky. Acts ch. 238, sec. 8, effective July 15, 1982; and ch. 305, sec. 1, effective July 15, 1982. -- Created 1974 Ky. Acts ch. 406, sec. 120, effective January 1, 1975.

Legislative Research Commission Note (7/14/2022). This statute was amended by 2022 Ky. Acts chs. 151 and 178, which do not appear to be in conflict and have been codified together.