

1 AN ACT relating to theft by deception.

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

3 ➔Section 1. KRS 514.040 is amended to read as follows:

4 (1) A person is guilty of theft by deception when the person obtains property or  
5 services of another by deception with intent to deprive the person thereof. A person  
6 deceives when the person intentionally:

7 (a) Creates or reinforces a false impression, including false impressions as to law,  
8 value, intention, or other state of mind;

9 (b) Prevents another from acquiring information which would affect judgment of  
10 a transaction;

11 (c) Fails to correct a false impression which the deceiver previously created or  
12 reinforced or which the deceiver knows to be influencing another to whom the  
13 person stands in a fiduciary or confidential relationship;

14 (d) Fails to disclose a known lien, adverse claim, or other legal impediment to the  
15 enjoyment of property which the person transfers or encumbers in  
16 consideration for the property obtained, whether the impediment is or is not  
17 valid or is or is not a matter of official record; or

18 (e) Issues or passes a check or similar sight order for the payment of money,  
19 knowing that it will not be honored by the drawee.

20 (2) The term "deceive" does not, however, include falsity as to matters having no  
21 pecuniary significance or puffing by statements unlikely to deceive ordinary  
22 persons in the group addressed.

23 (3) Deception as to a person's intention to perform a promise shall not be inferred from  
24 the fact alone that he or she did not subsequently perform the promise.

25 (4) For purposes of subsection (1) of this section:~~[,]~~

26 **(a) A person is presumed to create or reinforce a false impression when the**  
27 **person lists or advertises residential or commercial real property for sale,**

1                   lease, or rent without legal title or authority; and

2           **(b)** A maker of a check or similar sight order for the payment of money is  
3           presumed to know that the check or order, other than a postdated check or  
4           order, would not be paid, if:

5           ~~1. (a)~~       The maker had no account with the drawee at the time the check or  
6           order was issued; or

7           ~~2. (b)~~       Payment was refused by the drawee for lack of funds, upon  
8           presentation within thirty (30) days after issue, and the maker failed to  
9           make good within ten (10) days after receiving notice of that refusal.  
10          Notice of the refusal may include a citation to this section and a  
11          description of this section's criminal penalties and shall be deemed  
12          properly addressed when mailed to the address printed or written on the  
13          check or sight order or provided by the drawer or maker upon issuance  
14          of the check or sight order. The notice, if mailed, shall be deemed  
15          received by the addressee seven (7) days after it is placed in the United  
16          States mail. The notice may be sent by first-class mail if supported by an  
17          affidavit of service setting out the contents of the notice, the address to  
18          which the notice was mailed, that correct postage was applied, and the  
19          date the notice was placed in the United States mail. A maker makes  
20          good on a check or similar sight order for the payment of money by  
21          paying to the holder the face amount of the instrument, together with  
22          any merchant's posted bad check handling fee not to exceed fifty dollars  
23          (\$50) and any fee imposed pursuant to subsection (5) of this section.

24       (5) If a county attorney issues notice to a maker that a drawee has refused to honor an  
25       instrument due to a lack of funds as described in subsection (4)(b)~~2.~~ of this section,  
26       the county attorney may charge a fee to the maker of fifty dollars (\$50), if the  
27       instrument is paid. Money paid to the county attorney pursuant to this section shall

1 be used only for payment of county attorney office operating expenses.

2 (6) A person is guilty of theft by deception when the person issues a check or similar  
3 sight order in payment of all or any part of any tax payable to the Commonwealth  
4 knowing that it will not be honored by the drawee.

5 (7) A person is guilty of theft by deception when the person issues a check or similar  
6 sight order in payment of all or any part of a child support obligation knowing that  
7 it will not be honored by the drawee.

8 (8) Theft by deception is a Class B misdemeanor unless:

9 (a) The value of the property, service, or the amount of the check or sight order  
10 referred to in subsection (6) or (7) of this section is five hundred dollars  
11 (\$500) or more but less than one thousand dollars (\$1,000), in which case it is  
12 a Class A misdemeanor;

13 (b) The value of the property, service, or the amount of the check or sight order  
14 referred to in subsection (6) or (7) of this section is one thousand dollars  
15 (\$1,000) or more but less than ten thousand dollars (\$10,000), in which case it  
16 is a Class D felony;

17 (c) A person has three (3) or more convictions under paragraph (a) of this  
18 subsection within the last five (5) years, in which case it is a Class D felony.  
19 The five (5) year period shall be measured from the dates on which the  
20 offenses occurred for which the judgments of convictions were entered;

21 (d) The value of the property, service, or the amount of the check or sight order  
22 referred to in subsection (6) or (7) of this section is ten thousand dollars  
23 (\$10,000) or more, in which case it is a Class C felony;~~or~~

24 (e) The offense occurs during a declared emergency as defined by KRS 39A.020  
25 arising from a natural or man-made disaster, within the area covered by the  
26 emergency declaration, and within the area impacted by the disaster, in which  
27 case the person shall be charged one (1) level higher than the level otherwise

1 specified in this subsection.

2 (9) If any person commits two (2) or more separate offenses of theft by deception  
3 within ninety (90) days, the offenses may be combined and treated as a single  
4 offense, and the value of the property in each offense may be aggregated for the  
5 purpose of determining the appropriate charge.