

TITLE 6: CRIMES AND CRIMINAL PROCEDURE
DIVISION 1: CRIMES AGAINST THE PERSON

§ 1704. Misuse of Financial Instruments.

(a) A person commits an offense if the person misuses a credit card to obtain property, services, or a valuable benefit from one or more individuals, any governmental entity, a casino licensee, or a corporation or any other entity.

(b) A person misuses a credit card if the person uses a credit card for the purpose of obtaining property, services, or a valuable benefit with knowledge at the time of the transaction that:

- (1) the card is stolen or forged; or
- (2) the card has been revoked or cancelled; or
- (3) the person using the card is unauthorized by the issuer; or

(4) the person using the card has obtained consent from the person in whose name the card is issued by use of a threat of violence or bodily harm, physical intimidation or physical coercion.

*(c) A person who, willfully and with the intent to defraud, signs, issues or passes a check, marker, or similar sight order for the payment of money, to obtain:

- (1) money;
- (2) property;
- (3) services;
- (4) a valuable benefit, or

(5) the extension of credit in a business or consumer transaction or in a transaction with a casino licensee in any Senatorial District in the Commonwealth

drawn upon any real or fictitious person, bank, firm, partnership, corporation or depositary, when the person has insufficient money, property or credit with the drawee of the instrument to pay it in full upon its presentation commits an offense of theft.

*(d) In a criminal action arising out of or based on a violation of subsection (c) of this section, the intent to defraud or engage in theft and knowledge that the casino credit instrument, check or other similar sight order for payment will be dishonored or not paid is presumed to exist if:

- (1) the instrument is drawn on a purported account which does not exist; or
- (2) a written demand for payment was sent to the maker by certified or registered mail in accordance with 7 CMC § 2442 which demand shall contain the conspicuous notices for treble damages and payment of attorney's fees and the maker failed to pay the dishonored instrument in full plus any bank charges incurred by the payee within 30 days of the maker's receipt of the mailing; or

- (3) a mailing which complies with 7 CMC § 2442, but is returned because of no delivery or the maker's failure to claim the mailing from the appropriate postal authorities.

This presumption is not conclusive but is proof of intent and knowledge which can be rebutted by the drawer or maker. This subsection shall not apply to any

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post-dated check, post-dated marker, or other similar sight order for payment which is post-dated.

*(e) Except as otherwise provided in this subsection, a person who willfully and with the intent to defraud, signs a gaming guarantee, promissory note, an IOU, a post-dated check, or makes any written promise to pay on a future date, for purposes of obtaining:

- (1) money;
- (2) property;
- (3) services;
- (4) a valuable benefit, or

(5) the extension of credit in a business or consumer transaction or in a transaction with a casino licensee in any Senatorial District in the Commonwealth knowing that payment will not be made upon presentation or when due, is guilty of the offense of theft.

In a criminal action arising out of or based on a violation of this subsection, the intent to defraud or engage in theft will be presumed to exist if payment is not made when due or upon presentment and remains unpaid for 30 days after payment is due or after presentment.

This presumption is not conclusive but is proof of intent and knowledge which can be rebutted by the drawer or maker. For purposes of this subsection, a payment not made when due or upon presentment shall immediately begin accruing interest at the rate of 12% per annum and payment in full must include payment of the accrued interest.

(f) With respect to any criminal action arising out of or based on a violation of subsections (c) or (e):

(1) The presumption of intent and knowledge is not conclusive, but is proof of intent and knowledge which can be rebutted by the preponderance of the evidence at trial.

(2) The Attorney General's Office, upon written request from a casino licensee in any senatorial district or any other person who is victimized by a violation of a subsection (c) or (e), may, in its sole discretion, agree to pursue criminal action against the alleged perpetrator. Any such written request must involve a sum of \$100,000 or greater and must contain the following representations:

- (i) The debt is evidenced by a writing signed by the alleged perpetrator;
- (ii) There has not been any violation of the Federal Fair Debt Collection Practices Act ("FDCPA"), 15 U.S.C. §§ 1692–1692o;

- (iii) The prerequisite for establishing the rebuttal presumption of intent and knowledge have been satisfied; and

- (iv) The alleged perpetrator has signed an extradition waiver if the alleged perpetrator resides outside the Commonwealth or is otherwise living outside of the Commonwealth.

(3) Ten percent (10%) of the principal debt plus interest and liquidated damages, if any, recovered as restitution or paid as part of a pre-trial

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disposition or paid by the alleged perpetrator to the victim, directly or indirectly, after the Attorney General has decided in writing to pursue a criminal action shall belong to the Commonwealth. Of the ten percent (10%) due the Commonwealth, five percent (5%) shall be paid to the general fund and five percent (5%) shall be retained by the Office of the Attorney General for use solely for the recruitment and training of its professional staff and the acquisition of office equipment and supplies.

(4) The amount of the loss for purposes of a criminal action brought pursuant to subsection (c) shall be the treble damage amount allowable by 7 CMC § 2442.

(5) A conviction under either subsection (c) or (e) shall be punishable by 6 CMC § 1601(b). In addition to any other penalty, the court shall order the convicted person to pay restitution.

(6) If a complainant causes a criminal action to be commenced under subsection (c) or (e) but refuses to testify in the action or otherwise refuses to cooperate in the prosecution, then the complainant is presumed to have acted maliciously and without probable cause. This presumption is not conclusive but is subject to rebuttal by a preponderance of the evidence.

*So in original.

Source: PL 3-71, §1 (§444); repealed and reenacted by PL 20-85, § 4 (Jan. 7, 2019), modified.

Commission Comment: In codifying PL 20-85, the Commission removed drafting marks and stricken text pursuant to 1 CMC § 3806(g). The Commission inserted a comma after “services” in (a) for consistency; changed “\$100,000.00” to “\$100,000” in (f)(2); changed the comma to semicolon in (f)(2)(i)–(iii); and modified the capitalization in (f)(2)(i)–(iv) pursuant to 1 CMC § 3806(g).