

1 STATE OF OKLAHOMA

2 1st Session of the 53rd Legislature (2011)

3 SENATE BILL 764

By: Jolley

4  
5  
6 AS INTRODUCED

7 An Act relating to fraudulent transfers; amending 21  
8 O.S. 2001, Sections 1541.1 and 1541.2, which relate  
9 to obtaining property by trick or deception and  
10 value; prohibiting obtaining property by certain  
11 means; making certain actions prima facie evidence of  
12 intent under specified circumstances; defining terms;  
13 establishing punishment for specified offenses;  
14 requiring returned check to be in certain condition;  
15 repealing 21 O.S. 2001, Sections 1541.3, 1541.4, as  
16 last amended by Section 1, Chapter 428, O.S.L. 2009,  
17 and 1541.5, as amended by Section 2, Chapter 428,  
18 O.S.L. 2009 (21 O.S. Supp. 2010, Sections 1541.4 and  
19 1541.5), which relate to value, false or bogus  
20 checks, and credit; providing for codification; and  
21 providing an effective date.

22 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

23 SECTION 1. AMENDATORY 21 O.S. 2001, Section 1541.1, is  
24 amended to read as follows:

25 Section 1541.1 ~~Every~~ A. It shall be unlawful for any person  
26 ~~who~~, with intent to cheat and defraud, ~~shall to~~ obtain or attempt to  
27 obtain from any person, firm or corporation any money, property or  
28 valuable thing, ~~of a value less than Five Hundred Dollars (\$500.00),~~  
29 by means or by use of any trick or deception, or false or fraudulent

1 representation or statement or pretense, or by any other means or  
2 instruments or device commonly called the "confidence game", or by  
3 means or use of any false or bogus checks, or by any other written  
4 or printed or engraved instrument or spurious coin, ~~shall be guilty~~  
5 ~~of a misdemeanor and upon conviction thereof shall be punished by a~~  
6 ~~fine not to exceed One Thousand Dollars (\$1,000.00), or by~~  
7 ~~imprisonment in the county jail for not more than one (1) year, or~~  
8 ~~by both such fine and imprisonment~~ or to issue or transfer or cause  
9 to be issued or transferred a check or other negotiable order.

10 B. The making, drawing, uttering, or delivering of a check or  
11 negotiable order, payment of which is refused by the drawee, shall  
12 be prima facie evidence of intent to cheat and defraud and the  
13 knowledge of insufficient funds in, or credit with, such bank or  
14 other depository, provided:

15 1. The check or order is presented for payment within thirty  
16 (30) days after same is delivered and accepted;

17 2. The maker or drawer of the check or negotiable order had no  
18 open or valid account, credit, or insufficient funds with the drawee  
19 bank or depository at the time the check or negotiable order was  
20 issued;

21 3. The check or negotiable order was not post-dated or there  
22 was no agreement by the payee of the check or negotiable order to  
23 hold the check or negotiable order prior to presentment to the  
24 drawee; or

1       4. Payment was refused because the maker or drawer of the check  
2 or negotiable order stopped or countermanded payment fraudulently.

3       C. As used in this section:

4       1. "Check" or "negotiable order" shall include any form of  
5 debit from a demand deposit account, including but not limited to:

6       a. a check, bill of exchange, draft, order of withdrawal,  
7 or similar negotiable order,

8       b. an electronic check, electronic transaction, debit  
9 card transaction, check card transaction, substitute  
10 check, web check, or any form of automated clearing  
11 house transaction, or

12       c. any checks or negotiable orders, which are not honored  
13 on account of insufficient funds of the maker to pay  
14 the same or because the check or order was drawn on a  
15 closed or on a nonexistent account, when such checks  
16 or negotiable orders are given:

17       (1) in exchange for cash, merchandise, property or  
18 other valuable thing of which the purchaser takes  
19 immediate possession,

20       (2) in exchange for the performance of any labor or  
21 personal services, not to include labor or  
22 personal services performed pursuant to an  
23 employment relationship as defined in Title 40 of  
24 the Oklahoma Statutes,

- 1           (3) as a down payment for the purchase of any item or  
2           thing of value of which the purchaser is taking  
3           immediate possession or as a partial payment for  
4           securing services or materials necessary for the  
5           performance of services,
- 6           (4) in exchange for food of which the purchaser takes  
7           immediate possession,
- 8           (5) in full payment of money given for a motor  
9           vehicle when such payment is conditioned upon  
10           delivery of documents necessary for transfer of a  
11           valid title to the purchaser, or
- 12           (6) in payment of any court fees, court fines or  
13           court costs.

14           A check offered for the purchase of goods or livestock  
15           that is refused by the drawee shall not be considered  
16           to be an extension of credit by the seller of goods or  
17           livestock to the maker or drawer of the check; and

18           2. "Credit" means an arrangement or understanding with the  
19           bank, depository, or seller of goods or livestock for the payment of  
20           such check, draft, or order.

21           SECTION 2.        AMENDATORY        21 O.S. 2001, Section 1541.2, is  
22           amended to read as follows:

23           Section 1541.2   A. If the value of the money, property or  
24           valuable thing referred to in Section 1541.1 of this title is of a

1 value less than Five Hundred Dollars (\$500.00), any person convicted  
2 pursuant to this section shall be guilty of a misdemeanor and shall  
3 be punished by a fine not to exceed One Thousand Dollars  
4 (\$1,000.00), or by imprisonment in the county jail for not more than  
5 one (1) year, or by both such fine and imprisonment, and ordered to  
6 provide restitution to the victim as provided in Section 991a of  
7 Title 22 of the Oklahoma Statutes.

8       B. If the value of the money, property or valuable thing  
9 referred to in Section 1541.1 of this title is Five Hundred Dollars  
10 (\$500.00) or more but less than One Thousand Dollars (\$1,000.00), or  
11 if the total sum of two or more false or bogus checks, drafts or  
12 orders is Five Hundred Dollars (\$500.00) or more but less than One  
13 Thousand Dollars (\$1,000.00), any person convicted pursuant to this  
14 section shall be guilty of a felony and shall be punished by  
15 incarceration in the county jail for not to exceed one (1) year or  
16 incarceration in the county jail one or more nights or weekends  
17 pursuant to Section 991a-2 of Title 22 of the Oklahoma Statutes, at  
18 the option of the court, and shall be subject to a fine of not more  
19 than Five Thousand Dollars (\$5,000.00) and ordered to provide  
20 restitution to the victim as provided in Section 991a of Title 22 of  
21 the Oklahoma Statutes, ~~and if the value is One Thousand Dollars~~  
22 ~~(\$1,000.00) or more, any person convicted hereunder shall be deemed~~  
23 ~~guilty of a felony and shall be punished by imprisonment in the~~  
24 ~~State Penitentiary for a term not more than ten (10) years, or by a~~

1 ~~fine not to exceed Five Thousand Dollars (\$5,000.00), or by both~~  
2 ~~such fine and imprisonment.~~

3 C. If the value of the money, property or valuable thing  
4 referred to in Section 1541.1 of this title is One Thousand Dollars  
5 (\$1,000.00) or more, or if the total sum of two or more false or  
6 bogus checks, drafts or orders is One Thousand Dollars (\$1,000.00)  
7 or more, any person convicted pursuant to this section shall be  
8 guilty of a felony and shall be punished by imprisonment in the  
9 State Penitentiary for a term not more than ten (10) years, or by a  
10 fine not to exceed Five Thousand Dollars (\$5,000.00), or by both  
11 such imprisonment and fine, and ordered to provide restitution to  
12 the victim as provided in Section 991a of Title 22 of the Oklahoma  
13 Statutes.

14 D. Any person convicted of a third or subsequent violation of  
15 the provisions of subsection A of this section within ten (10) years  
16 of a conviction for the same offense shall be guilty of a felony and  
17 shall be punished by incarceration in the county jail for not to  
18 exceed one (1) year or incarceration in the county jail one or more  
19 nights or weekends pursuant to Section 991a-2 of Title 22 of the  
20 Oklahoma Statutes, at the option of the court, and shall be subject  
21 to a fine of not more than Five Thousand Dollars (\$5,000.00) and  
22 ordered to provide restitution to the victim as provided in Section  
23 991a of Title 22 of the Oklahoma Statutes.

24

1 SECTION 3. NEW LAW A new section of law to be codified  
2 in the Oklahoma Statutes as Section 1541.3A of Title 21, unless  
3 there is created a duplication in numbering, reads as follows:

4 When any financial institution or bank returns a dishonored  
5 check to the person, firm or corporation who deposited the check, it  
6 shall be legible and in substantially the same physical condition as  
7 when deposited, or in such condition as to provide the person who  
8 deposited the check the information required to identify the person  
9 who wrote the check.

10 SECTION 4. REPEALER 21 O.S. 2001, Sections 1541.3,  
11 1541.4, as last amended by Section 1, Chapter 428, O.S.L. 2009, and  
12 1541.5, as amended by Section 2, Chapter 428, O.S.L. 2009 (21 O.S.  
13 Supp. 2010, Sections 1541.4 and 1541.5), are hereby repealed.

14 SECTION 5. This act shall become effective November 1, 2011.  
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