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## Criminal Law; Insufficient Funds

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5. Ch. 249 §1 ¶1 (adding to NRS Ch. 207).
6. Id.
7. Id.
8. McLemore v. State, 125 So.2d 86, 89 (Miss. Sup. Ct., 1960); Commonwealth v. Murray, 213 A.2d 162, 164 (Pa. Sup. Ct. 1965), rev'd on other grounds, 223 A. 2d 102. See also 1 A.L.R. 3d 1359 (1965).
9. Ch. 249 §1 ¶1 (adding to NRS Ch. 207).
10. State v. Landecker, 126 A. 408, 409, (N.J. Sup. Ct. 1924); but the employer's interest must be involved, People v. Jacobs, 309 N.Y. 315, 130 N.E.2d 636 (1955). See also, 1 A.L.R. 3d 1350 (1965). See generally, Commonwealth v. Yarmark, 185 Pa. Super. 276, 137 A.2d 836 (1958).
11. Ch. 249 §1 ¶2 (adding to NRS Ch. 207).
12. Id.
13. Compare Ch. 249 §1 ¶1 with Ch. 249 §1 ¶2.
14. See NRS 199.480(2) (as amended by 1979 Nev. Stats. ch. 655 §28, adding punishment by fine of not more than \$5,000) and NRS 199.490.
15. McLemore v. State 241 Miss. 664, 125 So.2d 86 (1960); People v. Nankervis, 330 Mich. 17, 46 N.W.2d 592 (1951). See also Annot., 1 A.L.R. 3d 1363 (1965).
16. People v. Tuttle, 45 A.D. 2d 750, 356 N.Y.S. 2d 652 (1974).

### CRIMINAL LAW; INSUFFICIENT FUNDS

Adds to NRS Chapter 205

Amends NRS 205.130, 205.380

SB 174 (Glaser and Ashworth); STATS 1979, Ch 523

AB 389 (Glover); STATS 1979, Ch 537

Chapter 523 amends NRS 205.130 and adds to NRS Chapter 205 relating to the issuance of checks without sufficient funds. Chapter 537 amends NRS 205.380 to punish stopping payments on checks in certain circumstances.

#### Insufficient Funds

Chapter 523 provides for a presumption of intent to defraud when a check is issued without sufficient funds. The intent to defraud is presumed to exist when the

account does not exist;<sup>1</sup> when payment of the check is refused by the drawee, unless the drawer of the check subsequently pays the holder of the check;<sup>2</sup> or when notice of the drawee's refusal to pay the check, which is sent to the address on the check, is returned for nondelivery.<sup>3</sup>

Chapter 523 amends NRS 205.130 (providing a penalty for passing a check with intent to defraud) by raising the fine for violation from \$5,000 to \$10,000.<sup>4</sup> Imprisonment remains at one to ten years.<sup>5</sup>

Each bank and retail store is required to post a notice informing its customers of the punishment for issuing a check without sufficient funds.<sup>6</sup> Failure of the bank or store to post notice is not a defense to the crime.<sup>7</sup>

Any person who charges another with violation of NRS 205.130 and then refuses to testify on the matter is presumed to have acted maliciously and without probable cause.<sup>8</sup>

#### Stopping Payment

Chapter 537 amends NRS 205.380. It is prima facie evidence of intent to defraud if the drawer of a check given in payment for property which can be returned to any seller stops payment on the check and fails to return the property within five days of receiving notice from the seller that the check was not paid.<sup>9</sup> The seller must send notice to the drawer by certified mail, return receipt requested, to the address on the check.<sup>10</sup> Additionally, a rebuttable presumption of intent to defraud is raised if the notice is returned for nondelivery.<sup>11</sup>

Every bank and retail store is required to post a notice informing its customers of the punishment for stopping payment on a check without returning the property.<sup>12</sup> Chapter 537, unlike Chapter 523, does not contain a provision stating that failure to post a notice is not a defense to the crime.<sup>13</sup>

Chapters 523 and 537 are aimed at correcting technicalities in the law which have prevented prosecution in previous cases.<sup>14</sup> NRS 193.190 requires unity of act and intent for the commission of a crime. To be convicted, the defendant must have formed the intent to defraud before or simultaneously with the writing of the check. Therefore, the law could not reach a person who formed the intent to defraud after writing the check.<sup>15</sup> Chapters 523 and 527 avoid this problem by creating a presumption of intent to defraud at the time of issuing the check.<sup>16</sup> Such inferences have been upheld in criminal trials only where there is a rational connection

between the facts proved and the facts presumed.<sup>17</sup> Guilt must still be proved beyond a reasonable doubt.<sup>18</sup> The ultimate burden of persuasion remains with the prosecution.<sup>19</sup>

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#### FOOTNOTES

1. 1979 Nev. Stats. ch. 523 (hereinafter "Ch. 523") §2 ¶1(a) (adding to NRS Ch. 205).
2. Ch. 523 §2 ¶1(b) (adding to NRS Ch. 205).
3. Ch. 523 §2 ¶1(c) (adding to NRS Ch. 205).
4. Ch. 523 §4 (amending NRS 205.130(1)).
5. Compare NRS 205.130(1) (as amended by Ch. 523 §4) with 1975 Nev. Stats. ch. 480 §1 at 755 (NRS 205.130(1)).
6. Ch. 523 §3 ¶1 (adding to NRS Ch. 205).
7. Id. §3 ¶3 (adding to NRS Ch. 205).
8. Id. §2 ¶2 (adding to NRS Ch. 205).
9. 1979 Nev. Stats. ch. 537 (hereinafter "Ch. 537") §1 (amending NRS 205.380(2)).
10. Ch. 537 §1 (adding NRS 205.380(3)).
11. Id.
12. Id. §1 (adding NRS 205.380(4)).
13. Compare Ch. 523 §3 ¶3 (adding to NRS Ch. 205) with Ch. 537 §1 (adding NRS 205.380(4)).
14. See Senate Committee on Judiciary minutes for February 16, 1979, p. 3 and Assembly Committee on Judiciary minutes for March 9, 1979, pp. 3 and 4.
15. See Assembly Committee on Judiciary minutes for March 9, 1979, Exhibit A, for an example of such a situation.
16. Ch. 523 §2 (adding to NRS Ch. 205); Ch. 537 §1 (amending NRS 205.380(2) and adding NRS 205.380(3)).
17. U.S. v. Gainey, 380 U.S. 63, 66 (1965); Tot v. U.S., 319 U.S. at 467-468; Edwards v. Sheriff, 93 Nev. 13, 15, 558 P.2d 1144, 1145 (1977) (statutory presumption that a person in possession of a car without the owner's consent has stolen car—NRS 205.2715—is valid). See generally, White v. State, 83 Nev. 292, 429 P.2d 55 (1965) (statutory presumption that defendant who unlawfully enters building or vehicle

has broken and entered with intent to commit grand or petty larceny or felony—NRS 205.065—does not deny due process). But cf., Carter v. State, 82 Nev. 246, 415 P.2d 325 (1966) (statutory presumption that a person in possession of stolen goods within six months of their taking is guilty of stealing them—NRS 205.280, repealed by 1967 Nev. Stats. ch. 9 §1, at 35—was arbitrary and did not satisfy due process requirements).

18. Turner v. U.S., 396 U.S. 398, 416-418 (1970); Carter v. State, 82 Nev. at 249-250, 415 P.2d at 327.
19. Redeford v. State, 93 Nev. 649, 654, 572 P.2d 219, 221-222 (1977).

### CRIMINAL LAW; POSSESSION OF STOLEN PROPERTY

Amends NRS 205.275

SB 228 (Kosinski); STATS 1979, Ch 340

Chapter 340 adds a section to NRS 205.275 providing that possession of three or more similar items from which the manufacturer's serial or identification number has been removed or altered is prima facie evidence that the possessor is guilty of purchasing, receiving, or possessing stolen goods.<sup>1</sup> This provision is aimed at the retail or wholesale outlet selling stolen goods.<sup>2</sup>

Chapter 340 creates a rebuttable inference of guilt from possession of items without the manufacturer's serial or identification number. The legislature has power to create rules of evidence providing that certain facts are prima facie evidence of other facts,<sup>3</sup> but this power is limited by the due process clauses of the Fifth and Fourteenth Amendments to the United States Constitution.<sup>4</sup> Such inferences have been upheld in criminal trials only where there is a rational connection between the facts proved and the facts presumed;<sup>5</sup> guilt must still be proved beyond a reasonable doubt.<sup>6</sup> The ultimate burden of persuasion remains with the prosecution.<sup>7</sup>

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