

# SENATE BILL No. 40

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## DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 35-43-5-5.

**Synopsis:** Check deception. Allows multiple checks, orders, or drafts to be aggregated in value and charged in a single count of check deception.

**Effective:** July 1, 2017.

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January 3, 2017, read first time and referred to Committee on Corrections and Criminal Law.

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First Regular Session 120th General Assembly (2017)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2016 Regular Session of the General Assembly.

## SENATE BILL No. 40

A BILL FOR AN ACT to amend the Indiana Code concerning criminal law and procedure.

*Be it enacted by the General Assembly of the State of Indiana:*

1 SECTION 1. IC 35-43-5-5, AS AMENDED BY P.L.158-2013,  
2 SECTION 477, IS AMENDED TO READ AS FOLLOWS  
3 [EFFECTIVE JULY 1, 2017]: Sec. 5. (a) A person who knowingly or  
4 intentionally issues or delivers a check, a draft, or an order on a credit  
5 institution for the payment of or to acquire money or other property,  
6 knowing that it will not be paid or honored by the credit institution  
7 upon presentment in the usual course of business, commits check  
8 deception, a Class A misdemeanor. However, the offense is:  
9 (1) a Level 6 felony if the amount of the check, draft, or order is  
10 at least seven hundred fifty dollars (\$750) and less than fifty  
11 thousand dollars (\$50,000); and  
12 (2) a Level 5 felony if the amount of the check, draft, or order is  
13 at least fifty thousand dollars (\$50,000).  
14 (b) An unpaid and dishonored check, a draft, or an order that has the  
15 drawee's refusal to pay and reason printed, stamped, or written on or  
16 attached to it constitutes prima facie evidence:  
17 (1) that due presentment of it was made to the drawee for payment



1 and dishonor thereof; and

2 (2) that it properly was dishonored for the reason stated.

3 (c) The fact that a person issued or delivered a check, a draft, or an  
4 order, payment of which was refused by the drawee, constitutes prima  
5 facie evidence that the person knew that it would not be paid or  
6 honored. In addition, evidence that a person had insufficient funds in  
7 or no account with a drawee credit institution constitutes prima facie  
8 evidence that the person knew that the check, draft, or order would not  
9 be paid or honored.

10 (d) The following two (2) items constitute prima facie evidence of  
11 the identity of the maker of a check, draft, or order if at the time of its  
12 acceptance they are obtained and recorded, either on the check, draft,  
13 or order itself or on file, by the payee:

14 (1) Name and residence, business, or mailing address of the  
15 maker.

16 (2) Motor vehicle operator's license number, Social Security  
17 number, home telephone number, or place of employment of the  
18 maker.

19 (e) It is a defense under subsection (a) if a person who:

20 (1) has an account with a credit institution but does not have  
21 sufficient funds in that account; and

22 (2) issues or delivers a check, a draft, or an order for payment on  
23 that credit institution;

24 pays the payee or holder the amount due, together with protest fees and  
25 any service fee or charge, which may not exceed the greater of  
26 twenty-seven dollars and fifty cents (\$27.50) or five percent (5%) (but  
27 not more than two hundred fifty dollars (\$250)) of the amount due, that  
28 may be charged by the payee or holder, within ten (10) days after the  
29 date of mailing by the payee or holder of notice to the person that the  
30 check, draft, or order has not been paid by the credit institution. Notice  
31 sent in the manner set forth in IC 26-2-7-3 constitutes notice to the  
32 person that the check, draft, or order has not been paid by the credit  
33 institution. The payee or holder of a check, draft, or order that has been  
34 dishonored incurs no civil or criminal liability for sending notice under  
35 this subsection.

36 (f) A person does not commit a crime under subsection (a) when:

37 (1) the payee or holder knows that the person has insufficient  
38 funds to ensure payment or that the check, draft, or order is  
39 postdated; or

40 (2) insufficiency of funds or credit results from an adjustment to  
41 the person's account by the credit institution without notice to the  
42 person.



1           **(g) In determining the amount of a check, a draft, or an order**  
2           **under this section, acts of check deception committed in a single**  
3           **episode of criminal conduct (as defined in IC 35-50-1-2(b)) may be**  
4           **charged in a single count.**

