

## CHAPTER 5

### OFFENSES INVOLVING FRAUD

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These instructions are intended to cover the offenses contained in §§18-5-102; 18-5-307; 18-5-701; 18-5-707; 18-5-801 through-803; 18-5.5-101,-102; 18-13-114; 24-35-214; 12-55.5-107,-108; 24-32-2503, C.R.S.

#### 5:01 FORGERY

The elements of the crime of forgery are:

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. with intent to defraud,
4. falsely [made] [completed] [altered] [uttered] a written instrument,
5. which was or purported to be, or which was calculated to become or to represent if completed,
6. [part of an issue of money, stamps, securities, or other valuable instruments issued by a government or government agency] [part of an issue of stock, bonds, or other instruments representing interests in or claims against a corporation or other organization or its property] [a deed, will, codicil, contract, assignment, commercial instrument, promissory note, check, or other instrument which does or may evidence, create, transfer, terminate or otherwise affect a legal right, interest,

obligation, or status] [a public record or an instrument filed or required by law to be filed or legally fileable in or with a public office or public servant] [a written instrument officially issued or created by a public office, public servant, or government agency] [part of an issue of tokens, transfers, certificates or other articles manufactured and designed for use in transportation fees upon public conveyances, or as symbols of value useable in place of money for the purchase of property or services available to the public for compensation] [part of an issue of lottery tickets or shares designed for use in the lottery] [a document-making implement that may be used or is used in the production of a false identification document or in the production of another document-making implement to produce false identification documents].

7. [without the affirmative defense in Instruction \_\_\_\_\_ .]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of forgery.

After considering all the evidence, if you decide the prosecution has failed to prove any one or more the elements beyond a reasonable doubt, you should find the defendant not guilty of forgery.

#### **SOURCE & AUTHORITY**

§18-5-102, C.R.S.  
COLJI-Crim. No. 18:01-18:03 (1983).

*People v. Cunifare*, 102 P.3d 302 (Colo. 2004) (statute can include forgery of an instrument intended to affect the defendant's legal status in a criminal prosecution; victim need not actually be defrauded).

#### **NOTES ON USE**

Applicable definitions of "complete written instrument", "document-making implement", "falsely alter", "falsely complete", "falsely make", "forged instrument", "government", "identification document", "incomplete

written instrument", "produce", "utter", and "written instrument" are to be given with this instruction.

#### **CLASSIFICATION OF OFFENSE**

F5

#### **5:02 CRIMINAL POSSESSION OF A FORGED INSTRUMENT**

The elements of the crime of criminal possession of a forged instrument are:

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. possessed any forged written instrument, a \_\_\_\_\_  
\_\_\_\_\_  
(insert the name of a written instrument described in §18-5-102 C.R.S.)
4. with knowledge that it was forged, and
5. with intent to use it to defraud.
6. [without the affirmative defense in instruction number \_\_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of criminal possession of a forged instrument.

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of criminal possession of a forged instrument.

#### **NOTES ON USE**

When this instruction is used, the applicable definition of "forged instrument" must be given. Delete inapplicable bracketed material.

#### **SOURCE & AUTHORITY**

§18-5-105, C.R.S.

COLJI-Crim. No. 18:04-18:06 (1983).

#### **CLASSIFICATION OF OFFENSE**

F6

### **5:03 CRIMINAL POSSESSION OF A FORGERY DEVICE(KNOWLEDGE)**

The elements of the crime of criminal possession of a forgery device are:

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. [made] [possessed] any plate, die, or other device, apparatus, equipment, or article,
4. specifically designed for use in counterfeiting, unlawfully simulating, or otherwise forging written instruments or counterfeit marks,
5. with knowledge of its character.
6. [without the affirmative defense in instruction number \_\_\_\_ .]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of criminal possession of a forgery device.

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of criminal possession of a forgery device.

#### **NOTES ON USE**

Delete inapplicable bracketed material. When applicable, the definition of "counterfeit marks" and "knowingly" should be given.

#### **SOURCE & AUTHORITY**

§ 18-5-109(1)(a), C.R.S.

COLJI-Crim. No. 18:07 (1983).

#### **CLASSIFICATION OF OFFENSE**

F6

### **5:04 CRIMINAL POSSESSION OF A FORGERY DEVICE (INTENT)**

The elements of the crime of criminal possession of a forgery device are:

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. [made] [possessed] any device, apparatus, equipment or article capable of or adaptable for use in counterfeiting, unlawfully simulating or otherwise forging written instruments,
4. with intent to [use it himself/herself] [aid or permit another person to use it] for purposes of forgery.
5. [without the affirmative defense in instruction number  
\_\_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of criminal possession of a forgery device.

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of criminal possession of a forgery device.

#### **NOTES ON USE**

The definition of "with intent" should be given with this instruction. Delete inapplicable bracketed material.

#### **SOURCE & AUTHORITY**

§18-5-109(1) (b), C.R.S.

COLJI-Crim. No. 18:08 (1983).

#### **CLASSIFICATION OF OFFENSE**

F6

### **5:05 CRIMINAL POSSESSION OF A FORGERY DEVICE (GENUINE DEVICE)**

The elements of the crime of criminal possession of a forgery device are:

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. illegally possessed a genuine plate, die, or other device used in the production of written instruments,
4. with intent to fraudulently use it.

5. [without the affirmative defense in instruction number  
\_\_\_\_\_ . ]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of criminal possession of a forgery device.

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of criminal possession of a forgery device.

#### **NOTES ON USE**

Delete inapplicable bracketed material.

#### **SOURCE & AUTHORITY**

§18-5-109(1) (c), C.R.S.

COLJI-Crim. No. 18:09 (1983).

#### **CLASSIFICATION OF OFFENSE**

F6

### **5:06 CRIMINAL POSSESSION OF A FORGERY DEVICE (DOCUMENT-MAKING IMPLEMENT)**

The elements of the crime of criminal possession of a forgery device are:

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. unlawfully [made] [produced] [possessed] [uttered]

a document-making implement

4. knowing that such document-making implement may be used or was used in the production of [a false identification document] [a counterfeit mark] [an implement for the production of false identification documents or counterfeit marks]

5. [without the affirmative defense in instruction number

\_\_\_\_\_ . ]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of criminal possession of a forgery device.

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of criminal possession of a forgery device.

#### **NOTES ON USE**

When this instruction is used, the applicable definition of "document-making implement" and "knowingly" must be given. Delete inapplicable bracketed material.

#### **SOURCE & AUTHORITY**

§18-5-109(1)(d), C.R.S.

#### **CLASSIFICATION OF OFFENSE**

F6

### **5:07 CRIMINAL IMPERSONATION**

The elements of the crime of criminal impersonation are:

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. knowingly assumed a false or fictitious [identity] [capacity], and
4. in such [identity] [capacity],
5. [[married] [pretended to marry] [sustained the marriage relation toward] another, without the connivance of the other.]

-or-

[became bail or surety for a party to a [civil] [criminal] action or proceeding, before a court or officer authorized to take the bail or surety.]

-or-

[confessed a judgment with intent that the judgment be delivered as true.]

-or-

[[subscribed] [verified] [published] [acknowledged] [proved] a written instrument which by law may be recorded, with intent that the instrument be delivered as true.]

-or-

[did any act which, if done by the person falsely impersonated would subject such person to a [[civil] [criminal] action or special proceeding] [liability] [charge] [forfeiture] [penalty].]

-or-

[did any act with intent to [unlawfully gain a benefit for himself or another] [[injure] [defraud] another].]

6. [without the affirmative defense in instruction number  
\_\_\_\_\_ . ]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of criminal impersonation.

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of criminal impersonation.

#### **NOTES ON USE**

Delete inapplicable bracketed material. The definitions of "knowingly" and "with intent" should be given with this instruction.

#### **SOURCE & AUTHORITY**

§18-5-113, C.R.S.

COLJI-Crim. No. 18:13 (1983).

*Alvarado v. People*, 132 P.3d 235 (Colo. 2006) (§18-5-113(1)(e) requires two mental states—knowingly assuming a false identity and with the intent to gain a benefit)

*People v. Perez*, 129 P.3d 1090 (Colo. App. 2005) (criminal impersonation is a continuing offense). Compare *People v. Johnson*, 30 P.3d 718 (Colo. App. 2000) and *People v. Peay*, 5 P.3d 398 (Colo. App. 2000) on issue of the necessity of establishing an affirmative act in addition to assumption of the false identity.

#### **CLASSIFICATION OF OFFENSE**

## **5:08 OFFERING A FALSE INSTRUMENT FOR RECORDING (FIRST DEGREE)**

The elements of the crime of offering a false instrument for recording in the first degree are:

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. with the intent to defraud,
4. presented or offered to a public [officer] [employee],
5. a written instrument [relating to or affecting real or personal property] [directly affecting contractual relationships],
6. with knowledge that the instrument contained [a] material false [statement] [information], and
7. with knowledge or belief that the instrument would be registered, filed, or recorded or become a part of the records of that public [office] [employee].
8. [without the affirmative defense in instruction number \_\_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of offering a false instrument for recording in the first degree.

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of inducing consumption of offering a false instrument for recording in the first degree.

#### **NOTES ON USE**

Delete inapplicable bracketed material. The definition of "with intent" should be given with this instruction.

#### **SOURCE & AUTHORITY**

§18-5-114(1), (2), C.R.S.

COLJI-Crim. No. 18:14 (1983).

*People v. Cohn*, 160 P.3d 336 (Colo. App. 2007) (victim need not be defrauded)

*People v. Bagby*, 734 P.2d 1059 (Colo. 1988) (where Liquor Code provided comprehensive scheme of regulation, filing charges for false recording under that more specific provision is appropriate, not under the general criminal statute offering a false instrument for recording).

#### **CLASSIFICATION OF OFFENSE**

F5

### **5:09 OFFERING A FALSE INSTRUMENT FOR RECORDING (SECOND DEGREE)**

The elements of the crime of offering a false instrument for recording in the second degree are:

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. presented or offered to a public [officer] [employee],
4. a written instrument [relating to or affecting real or personal property] [directly affecting contractual relationships],

5. with knowledge that the instrument contained [a] material false [statement] [information], and

6. with knowledge or belief that the instrument would be registered, filed, or recorded or become a part of the records of that public [office] [employee].

7. [without the affirmative defense in instruction number

                .]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of offering a false instrument for recording in the second degree.

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of inducing consumption of offering a false instrument for recording in the second degree.

#### **NOTES ON USE**

The definition of "knowingly" should be given with this instruction. Delete inapplicable bracketed material.

#### **SOURCE & AUTHORITY**

§18-5-114(3), (4), C.R.S.

COLJI-Crim. No. 18:15 (1983).

#### **CLASSIFICATION OF OFFENSE**

## 5:10 INDUCING CONSUMPTION OF CONTROLLED SUBSTANCES BY FRAUDULENT MEANS

The elements of the crime of inducing consumption of controlled substances by fraudulent means are:

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. [surreptitiously] [[by means of [fraud]  
[misrepresentation] [suppression of truth] [deception]  
[subterfuge]]]
4. caused another person to unknowingly [consume]  
[receive the direct administration of] \_\_\_\_\_(insert name of  
controlled substance)\_\_\_\_\_, a controlled substance.
5. [without the affirmative defense in instruction  
number \_\_\_\_ .]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of inducing consumption of controlled substances by fraudulent means.

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of inducing consumption of controlled substances by fraudulent means.

### NOTES ON USE

Delete inapplicable bracketed material. When this instruction is used, the applicable definition of "controlled substance" based upon §12-22-303(7), C.R.S. should be given.

§18-5-116(1), C.R.S. states "nothing in this section shall diminish the scope of health care authorized by law."

**SOURCE & AUTHORITY**

§18-5-116, C.R.S.

COLJI-Crim. No. 18:19 (1983).

**CLASSIFICATION OF OFFENSE**

F4

**5:11 FRAUD BY CHECK (INSUFFICIENT FUNDS)**

The elements of the crime of fraud by check are:

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. with intent to defraud, and
4. knowing he had insufficient funds with the drawee
5. issued a check for payment of services, wages, salary, commissions, labor, rent, money, property, or other things of value, and
6. the check involved was for the amount of [less than five hundred dollars] [five hundred dollars or more, but less than one thousand dollars] [one thousand dollars or more] [the offense involved two or more checks issued within a sixty day period in the State of Colorado having an aggregate amount of [five hundred dollars or more, but less than one thousand dollars] [one thousand dollars or more]]

-or-

the check involved was for the amount of [less than one hundred dollars] [one hundred dollars or more, but less than five hundred dollars] [five hundred dollars or more] [the offense involved two or more checks issued within a sixty day period in the State of Colorado having an aggregate amount of [one hundred dollars or more, but less

than five hundred dollars] [five hundred dollars or more]]

7. [without the affirmative defense in instruction number \_\_\_\_ .]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of fraud by check.

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of fraud by check.

#### **NOTES ON USE**

The values changed for offenses committed on or after July 1, 2007. Delete inapplicable bracketed material.

When this instruction is used, the applicable definitions of "check," "drawee," "insufficient funds," and "issue" must be given. A special verdict form may be needed with this instruction.

See special rule on permissible inferences.

#### **SOURCE & AUTHORITY**

§18-5-205, C.R.S.

COLJI-Crim. No. 18:24 (1983).

*People v. Guitierrez*, 1 P.3d 241 (Colo. App. 1999) (statute does criminalize giving an insufficient fund check for an antecedent debt).

#### **CLASSIFICATION OF OFFENSE**

F6, if check was for \$1,000 or more

M1, if check was for \$500 to \$1,000

M2, if check was less than \$500

F6, if check was for \$500 or more

M2, if check was for \$100 to \$500

### **5:12 FRAUD BY CHECK(CLOSED ACCOUNT)**

The elements of the crime of fraud by check are:

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. with intent to defraud,
4. issued a check for payment of services, wages, salary, commissions, labor, rent, money, property, or other things of value, and
5. the check was drawn on an account which did not exist or which had been closed for a period of thirty days or more prior to the issuance of the check.
6. [without the affirmative defense in instruction number  
                .]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of fraud by check.

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of fraud by check.

#### **NOTES ON USE**

Delete inapplicable bracketed material. When this instruction is used, the applicable definitions of "check," "drawee," "intent" and "issue" must be given.

See Special Rule on Permissible Inferences.

**SOURCE & AUTHORITY**

§18-5-205(3)(d), C.R.S.

COLJI-Crim. No. 18:26 (1983).

**CLASSIFICATION OF OFFENSE**

F6

**5:13 DEFRAUDING A SECURED CREDITOR**

The elements of the crime of defrauding a secured creditor are:

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. [sold] [assigned] [transferred] [conveyed]  
[pledged] [encumbered] [concealed] [destroyed] [disposed  
of] any collateral subject to a security interest,
4. with intent to defraud a creditor by defeating,  
impairing, or rendering worthless or unenforceable any  
security interest, and
5. the value of the collateral involved was [less than  
five hundred dollars] [five hundred dollars or more, but  
less than one thousand dollars] [one thousand dollars or  
more, but less than twenty thousand dollars] [twenty  
thousand dollars or more].

-or-

the value of the collateral involved was [less than  
one hundred dollars] [one hundred dollars or more, but less  
than five hundred dollars] [five hundred dollars or more,  
but less than fifteen thousand dollars] [fifteen thousand  
dollars or more].

6. [without the affirmative defense in instruction number  
\_\_\_\_\_ . ]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of defrauding a secured creditor.

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of defrauding a secured creditor.

#### **NOTES ON USE**

The values changed for offenses committed on or after July 1, 2007. Delete inapplicable bracketed material.

Use of a special verdict form will be necessary when more than one possible value (element 5) is used, or a lesser included offense instruction can be used.

When this instruction is given, the applicable definition of "security interest" must be given.

#### **SOURCE & AUTHORITY**

§18-5-206(1), C.R.S.

COLJI-Crim. No. 18:27 (1983).

#### **CLASSIFICATION OF OFFENSE**

F3, if value is \$20,000 or greater

F5, if value is \$1,000 to \$20,000

M1, if value is \$500 to \$1,000

M2, if value is less than \$500

F3, if value is \$15,000 or greater

F5, if value is \$500 to \$15,000

M2, if value is \$100 to \$500

M3, if value is less than \$100

## **5:14 DEFRAUDING A DEBTOR**

The elements of the crime of defrauding a debtor are:

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. as a creditor,
4. [sold] [assigned] [transferred] [conveyed]  
[pledged] [bought] [encumbered] a promissory note or  
contract signed by a debtor,
5. with intent to defraud the debtor, and
6. the amount owing on the note or contract was [less  
than five hundred dollars] [five hundred dollars or more,  
but less than one thousand dollars] [one thousand dollars  
or more, but less than twenty thousand dollars] [twenty  
thousand dollars or more].  
[the amount owing on the note or contract was [less  
than one hundred dollars] [one hundred dollars or more, but  
less than five hundred dollars] [five hundred dollars or  
more, but less than fifteen thousand dollars] [fifteen  
thousand dollars or more]].
7. [without the affirmative defense in instruction  
number  
\_\_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of defrauding a debtor.

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of defrauding a debtor.

#### **NOTES ON USE**

The values changed for offenses committed on or after July 1, 2007. Delete inapplicable bracketed material.

Use of a special verdict form will be necessary when more than one possible value is used, or a lesser included offense instruction can be used.

#### **SOURCE & AUTHORITY**

§18-5-206(2), C.R.S.

COLJI-Crim. No. 18:28 (1983).

#### **CLASSIFICATION OF OFFENSE**

F3, if value is \$20,000 or greater

F5, if value is \$1,000 to \$20,000

M1, if value is \$500 to \$1,000

M2, if value is less than \$500

F3, if value is \$15,000 or greater

F5, if value is \$500 to \$15,000

M2, if value is \$100 to \$500

M3, if value is less than \$100

### **5:15 RECEIVING DEPOSITS IN A FAILING FINANCIAL INSTITUTION**

The elements of the crime of receiving deposits in a failing financial institution are:

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. as an officer, manager, or other person participating in the direction of a financial institution,
4. with knowledge that the institution was insolvent,
5. knowingly received or permitted receipt of a deposit or investment.
6. [without the affirmative defense in instruction number  
\_\_\_\_\_.]

A financial institution is "insolvent" when it is unable, from any cause, to pay its obligations in the ordinary or usual course of business, or its liabilities exceed its assets.

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of receiving deposits in a failing financial institution.

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of receiving deposits in a failing financial institution.

#### **NOTES ON USE**

Delete inapplicable bracketed material.

#### **SOURCE & AUTHORITY**

§18-5-210, C.R.S.

COLJI-Crim. No. 18:32 (1983).

## **CLASSIFICATION OF OFFENSE**

F6

### **5:16 SELLING LAND TWICE**

The elements of the crime of selling land twice are:

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. after once [selling, bartering, or disposing of any land] [executing any bond or agreement for the sale of any land], and
4. with intent to defraud,
5. again [sold, bartered, or disposed of] [executed any bond or agreement to sell, barter, or dispose of] the same tract of land or any part of the same tract of land to any other person.
6. [without the affirmative defense in instruction number  
\_\_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of selling land twice.

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of selling land twice.

#### **NOTES ON USE**

Delete inapplicable bracketed material.

**SOURCE & AUTHORITY**

§18-5-302(1), C.R.S.

COLJI-Crim. No. 18:34 (1983).

**CLASSIFICATION OF OFFENSE**

F5

**5:17 FALSE REPRESENTATION CONCERNING OWNERSHIP OF LAND**

The elements of the crime of false representation concerning ownership of land are:

1. That the defendant,
2. in the State of Colorado, at or about the date, and place charged,
3. knowingly made a false representation concerning the existence of an ownership interest in land [which he had as a seller] [which his principal had]
4. which was relied upon.
5. [without the affirmative defense in instruction number \_\_\_\_ .]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of false representation concerning ownership of land.

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of false representation concerning ownership of land.

**NOTES ON USE**

The definition of "knowingly" should be given with this instruction. Delete inapplicable bracketed material.

**SOURCE & AUTHORITY**

§18-5-302(2), C.R.S.

COLJI-Crim. No. 18:35 (1983).

*People v. Alexander*, 663 P.2d 1024 (Colo. 1983) (statute requires actual reliance by victim without regard to what a reasonable person would do).

**CLASSIFICATION OF OFFENSE**

F5

**5:18 UNAUTHORIZED USE OF A FINANCIAL TRANSACTION DEVICE**

The elements of the crime of unauthorized use of a financial transaction device are:

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. with the intent to defraud,
  - a. used a financial transaction device
  - b. for the purpose of [obtaining cash, credit, property, or services] [making a financial payment], and
4. with notice that [the financial transaction device has expired, been revoked, or been cancelled] [his/her use of the financial transaction device is unauthorized by the issuer or account holder], and
5. the [value] [aggregate value within a six-month period from the date of the first unauthorized use] was [less than one thousand dollars] [one thousand dollars or more, but less than twenty thousand dollars] [twenty thousand dollars or more].

the [value] [aggregate value within a six-month period from the date of the first unauthorized use] was [less than one hundred dollars] [one hundred dollars or more, but less than five hundred dollars] [five hundred dollars or more, but less than fifteen thousand dollars] [fifteen thousand dollars or more].

6. [without the affirmative defense in instruction number

\_\_\_\_\_ . ]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of unauthorized use of a financial transaction device.

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of unauthorized use of a financial transaction device.

#### **NOTES ON USE**

The values changed for offenses committed on or after July 1, 2007. When the value or aggregate value is in dispute, more than one alternative may be given. In such case, a special verdict form shall be provided, upon which the jury shall indicate its unanimous finding as to value of instruction on lesser included offenses may be given.

#### **SOURCE & AUTHORITY**

§18-5-702, C.R.S.

*People v. Novitskiy*, 81 P.3d 1070 (Colo. App. 2003) (section requires defendant obtain something of value through use of device).

#### **CLASSIFICATION OF OFFENSE**

F3, if value is \$20,000 or more

F5, if value is \$1,000 to \$20,000

M1, if value is less than \$1,000

F3, if value is \$15,000 or more

F5, if value is \$500 to \$15,000

M2, if value is \$100 to \$500

PO1, if value is less than \$100

## **5:19 POSSESSION OF FORGERY DEVICES**

The elements of the crime of possession of forgery devices are:

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. knowingly possessed any [tools] [photographic equipment] [printing equipment] or any device that [were] [was] adapted, designed, or commonly used
4. [for committing or facilitating the commission of an offense involving the unauthorized [manufacture] [printing] [embossing] [magnetic encoding] of a financial transaction device]

-or-

[for committing or facilitating the commission of an offense involving the altering or addition of [uniform product codes] [optical characters] [holographic images] to a financial transaction device]

-and-

5. [intended to use the thing(s) possessed in the commission of such an offense]

-or-

[knew that some other person intended to use the thing(s) possessed in the commission of an offense].

6. [without the affirmative defense in instruction number  
\_\_\_\_\_ . ]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of possession of forgery devices.

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of possession of forgery devices.

#### **NOTES ON USE**

Delete inapplicable bracketed material.

When this instruction is given, the definition of "financial transaction device" and "knowingly" must be given. The definition of "intent" should be given, when applicable.

#### **SOURCE & AUTHORITY**

§18-5-706, C.R.S.  
COLJI-Crim. No. 18:50 (1983).

#### **CLASSIFICATION OF OFFENSE**

F6

### **5:20 CRIMINAL POSSESSION OF A FINANCIAL TRANSACTION DEVICE**

The elements of the crime of criminal possession of a financial transaction device are

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,

3. knowingly [possessed] [controlled] any [one financial transaction device] [two or more financial transaction devices] [four or more financial transaction devices issued to different account holders]

4. [with intent to defraud].

-or-

[which he knew or reasonably should have known to be lost, stolen, or delivered under mistake as to the identity or address of the account holder]].

5. [without the affirmative defense in instruction number

\_\_\_\_\_]. ]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of criminal possession of a financial transaction device.

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of criminal possession of a financial transaction device.

#### **NOTES ON USE**

Delete inapplicable bracketed material.

When this instruction is given, the definition of "financial transaction device" must be given.

The jury is to be given an interrogatory concerning the number of financial devices possessed. §18-5-703(2), (3), and (4), C.R.S.

This instruction is to be used for offenses before July 1, 2006. Similar conduct is now regulated by §18-5-903, C.R.S.

**SOURCE & AUTHORITY**

§18-5-703, C.R.S.

COLJI-Crim. No. 18:52 (1993).

*People v. Stevenson*, 881 P.2d 383 (Colo. App. 1994)  
(statute constitutional).

**CLASSIFICATION OF OFFENSE**

M2 (where one such device was possessed)

F5 (where two or three such devices were possessed)

F4 (where four or more such devices issued to  
different account holders were possessed)

**5:20.1 CRIMINAL POSSESSION OF A FINANCIAL DEVICE  
(OFFENSES COMMITTED JULY 1, 2006 OR AFTER)**

The elements of the crime of criminal possession of a financial device are

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. knowingly [possessed] [controlled] any [one financial device] [two or more financial devices] [four or more financial devices issued to different account holders]
4. which (s)he knew or reasonably should have known to be lost, stolen, or delivered under mistake as to the identity or address of the account holder.
5. [without the affirmative defense in instruction number \_\_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of

criminal possession of a financial device.

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of criminal possession of a financial device.

#### **NOTES ON USE**

Delete inapplicable bracketed material.

When this instruction is given, the definition of "financial device" must be given.

"FINANCIAL DEVICE" means any instrument or device that can be used to obtain cash, credit, property, services or any other thing of value or to make financial payments, including but not limited to: (a) a credit card, banking card, debit card, electronic fund transfer card, or guaranteed check card; (b) a check; (c) a negotiable order of withdrawal; (d) a share draft; or (e) a money order.

The jury is to be given an interrogatory concerning the number of financial devices possessed. §18-5-903(2), (3), and (4), C.R.S.

This instruction is to be used for offenses on or after July 1, 2006. Similar conduct was previously regulated by §18-5-703 C.R.S. (2005)

#### **SOURCE & AUTHORITY**

§18-5-903, C.R.S.

COLJI-Crim. No. 18:52 (1993).

*People v. Stevenson*, 881 P.2d 383 (Colo. App. 1994) (prior statute constitutional).

#### **CLASSIFICATION OF OFFENSE**

M1 (where one such device was possessed)

F6 (where two or three such devices were possessed)

F5 (where four or more such devices issued to different account holders were possessed)

### **5:21 UNLAWFUL MANUFACTURE OF A FINANCIAL TRANSACTION DEVICE**

The elements of the crime of unlawful manufacture of a financial transaction device are:

1. That the defendant,
  2. in the State of Colorado, at or about the date and place charged,
  3. with intent to defraud,
  4. [falsely made or manufactured a financial transaction device by [printing] [embossing] [magnetically encoding]
- or-
4. [falsely altered or added [uniform product codes] [optical characters] [holographic images]]
  5. which [were] [was] [purported to be] [calculated to become] [represented as] a financial transaction device.

-or-

4. [falsely completed a financial transaction device by adding to an incomplete device to make it a complete one].

[5., 6. without the affirmative defense in instruction no. \_\_\_\_ .]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of unlawful manufacture of a financial transaction device.

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of unlawful manufacture of a financial transaction device.

#### **NOTES ON USE**

Delete inapplicable bracketed material.

When this instruction is given, the definitions of "financial transaction device," "falsely make," "falsely alter", "falsely complete" and "with intent" must be given.

#### **SOURCE & AUTHORITY**

§18-5-707, C.R.S.

COLJI-Crim. No. 18:51.

#### **CLASSIFICATION OF OFFENSE**

F5

### **5:22 SELLING A FINANCIAL TRANSACTION DEVICE**

The elements of the crime of selling a financial transaction device are:

1. That the defendant,
2. in the State of: Colorado, at or about the date and place charged.,
3. with intent to defraud,
4. [sold, ]

-or-

[possessed or controlled with the intent to deliver, circulate, or sell]

5. any [one] [two or more] financial transaction device(s) which he [knew] [reasonably should have known] to be [lost] [stolen] [delivered under a mistake as to the identity or address of the account holder] [forged] [altered] [counterfeited].

6. [without the affirmative defense instruction number  
\_\_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of selling a financial transaction device.

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of selling a financial transaction device.

#### **NOTES ON USE**

This instruction applies to crimes committed on or before June 30, 2006.

Delete inapplicable bracketed material. When this instruction is given, the definition of "financial transaction device" and "with intent" must be given.

#### **SOURCE & AUTHORITY**

§18-5-704, C.R.S. (2005).

COLJI-Crim. No. 18:53 (1993).

#### **CLASSIFICATION OF OFFENSE**

F3, if two or more financial transaction devices

F5, if on financial transaction device

**5:23 SALE OR POSSESSION OF A BLANK FINANCIAL TRANSACTION DEVICE**

The elements of the crime of sale or possession of a blank financial transaction device are:

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. knowingly
  - a. possessed, controlled, or received from another person
  - b. without the authorization of the issuer or manufacturer
4. [sells]

-or-

[with intent to use, deliver, circulate or sell,]

-or-

[with intent to cause the use, delivery, circulation or sale of it,]
5. any financial transaction device which has not been embossed or magnetically encoded with the name of the account holder, personal identification code, expiration date, or other proprietary institutional information.
6. [without the affirmative defense instruction number  
                .]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of sale or possession of a blank financial transaction device.

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the

elements beyond a reasonable doubt, you should find the defendant not guilty of sale or possession of a blank financial transaction device.

#### **NOTES ON USE**

Delete inapplicable bracketed material.

The definition of "financial transaction device" , "knowingly" and "with intent" must be given with this instruction, when applicable.

#### **SOURCE & AUTHORITY**

§18-5-705, C.R.S.

COLJI-Crim. No. 18:54 (1993).

#### **CLASSIFICATION OF OFFENSE**

F3, if delivery, circulation or sale of two or more blank financial transaction devices

F4, if delivery, circulation or sale of one blank financial transaction device

F5, if possession of two or more blank financial transaction devices

F6, if possession of one blank financial transaction device

#### **5:24 USE OF FORGED ACADEMIC RECORD**

The elements of the crime of use of forged academic record are:

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,

3. falsely [made] [completed] [altered] [uttered] a written instrument which was or which was purported to be or was calculated to become or to represent, if completed

4. a bona fide academic record of an institution of secondary or higher education,

5. [with the intent to seek employment] [with the intent to seek admission to a public or private institution of higher education in this state] [for the purpose of securing a scholarship or other form of financial assistance from a public or private institution of higher learning or from other public or private sources of financial assistance,

6. [without the affirmative defense instruction number \_\_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of use of forged academic record.

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of use of forged academic record.

#### **NOTES ON USE**

Delete inapplicable bracketed material.

When this instruction is used the definition of "with intent" and "written instrument" must be given. In addition, the following definitions are applicable:

"Academic record" means a transcript, diploma, grade report, or similar document of an institution of secondary or higher education.

"Financial assistance" means financial assistance for educational purposes, including, but not limited to, loans, scholarships, grants, fellowships, assistantships, work-study programs, or other forms of financial aid.

**SOURCE & AUTHORITY**

§18-5-104.5, C.R.S.

**CLASSIFICATION OF OFFENSE**

M1

**5:25 CRIMINAL SIMULATION**

The elements of the crime of criminal simulation are:

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. [with intent to defraud,
4. made, altered, or represented any object in such a fashion that it appeared to have antiquity, rarity, source or authorship, ingredient, or composition,
5. which the object did not, in fact, have.]

-or-

3. [with knowledge of its true character, and
4. with intent to defraud,
5. [uttered] [misrepresented] [possessed] any object made or altered in such a fashion that it appeared to have an antiquity, rarity, source or authorship, ingredient, or composition,
6. which the object did not, in fact, have.]

[6 or 7. without the affirmative defense instruction number \_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of

criminal simulation.

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of criminal simulation.

**NOTES ON USE**

Delete inapplicable bracketed material.

**SOURCE & AUTHORITY**

§18-5-110, C.R.S.  
COLJI-Crim. No. 18:10 (1983).

**CLASSIFICATION OF OFFENSE**

M1

**5:26 TRADEMARK COUNTERFEITING**

The elements of the crime of are:

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. intentionally [manufactured] [displayed] [advertised] [distributed] [offered for sale] [sold] [possessed with the intent to sell or distribute],
4. marks, goods or services,
5. that the defendant knew [were] [bore] [were identified by] one or more counterfeit marks, and
6. the defendant had possession, custody or control of [more than twenty-five goods or services but less than one hundred that bore, were identified by a counterfeit mark]

[more than one hundred items that were, bore or were identified by a counterfeit mark] [goods or services that were, bore, or were identified by a counterfeit mark that had a retail value of [less than one thousand dollars] [one thousand dollars or more],

7. [without the affirmative defense instruction number \_\_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of trademark counterfeiting.

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of trademark counterfeiting.

#### **NOTES ON USE**

Delete inapplicable bracketed material. When applicable, the definitions of "counterfeit mark", "intentionally", "retail value" and "trademark" must be given.

For purposes of this instruction:

(a) "Counterfeit mark" means a mark identical to or substantially indistinguishable from a trademark that, without the permission of the owner of the trademark, is:

(II) Affixed or designed to be affixed to, or displayed or otherwise associated with, goods; or

(III) Displayed in advertising for, or otherwise associated with, services.

(b) (I) "Retail value" means the counterfeiter's regular selling price for the goods or services that bear or are identified by a counterfeit mark.

(II) In the case of items bearing a counterfeit mark that are components of a finished product, "retail value"

means the counterfeiter's regular selling price for the finished product.

(III) For purposes of subsection (2) of this section, the quantity or retail value of goods or services shall include the aggregate quantity or retail value of all marks, goods, and services that are, bear, or are identified by counterfeit marks.

(c) "Trademark" means any trademark registered under the laws of this state or of the United States.

#### **SOURCE & AUTHORITY**

§18-5-110.5, C.R.S.

#### **CLASSIFICATION OF OFFENSE**

M1, if prior conviction, value is \$1,000 or more or possession, custody or control is of 100 items or more

M2, if M1 conditions not met

#### **5:27 UNLAWFULLY USING SLUGS**

The elements of the crime of unlawfully using slugs are:

2. That the defendant,
3. in the State of Colorado, at or about the date and place charged,
4. [with intent to defraud the vendor of property or a service sold by means of a coin machine,
5. knowingly [inserted] [deposited] [used] a slug in such a machine, or caused such a machine to be operated by any unauthorized means.]

-or-

3. [[made] [possessed] [disposed of] a slug or slugs

4. with intent to enable a person to use [it] [them] fraudulently in a coin machine.]

5. without the affirmative defense in instruction number \_\_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of unlawfully using slugs.

After considering all the evidence, if you decide the prosecution has failed to prove each of the elements beyond a reasonable doubt, you should find the defendant not guilty of unlawfully using slugs.

#### **NOTES ON USE**

When this instruction is used, the applicable definitions of "coin machine", "knowingly" , "with intent" and "slug" must be given. Delete inapplicable bracketed material.

#### **SOURCE & AUTHORITY**

**§ 18-5-111**, C.R.S.

COLJI-Crim. No. 18:11 (1983).

#### **CLASSIFICATION OF OFFENSE**

M3

#### **5:28 OBTAINING SIGNATURE BY DECEPTION**

The elements of the crime of obtaining signature by deception are:

1. That the defendant,

2. in the State of Colorado, at or about the date and place charged,

3. with intent to [defraud] [acquire a benefit for himself or another],

4. caused another to sign or execute a written instrument by deception.

5. [without the affirmative defense in instruction number  
\_\_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of obtaining signature by deception.

After considering all the evidence, if you decide the prosecution has failed to prove each of the elements beyond a reasonable doubt, you should find the defendant not guilty of obtaining signature by deception.

#### **NOTES ON USE**

Delete inapplicable bracketed material.

When this instruction is used, the applicable definition of "with intent" and "by deception" must be given.

#### **SOURCE & AUTHORITY**

**§ 18-5-112, C.R.S.**

COLJI-Crim. No. 18:12 (1983).

#### **CLASSIFICATION OF OFFENSE**

## **5:29 PURCHASE ON CREDIT TO DEFRAUD**

The elements of the crime of purchase on credit to defraud are:

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. purchased any personal property on credit,
4. with intent to defraud the seller or vendor, and
5. thereafter [sold] [hypothecated] [pledged]  
[disposed  
of] the personal property,
6. before paying for it.
7. [without the affirmative defense in instruction number  
\_\_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of purchase on credit to defraud.

After considering all the evidence, if you decide the prosecution has failed to prove each of the elements beyond a reasonable doubt, you should find the defendant not guilty of purchase on credit to defraud.

### **NOTES ON USE**

The definition of "with intent" should be given with this instruction. Delete inapplicable bracketed material.

### **SOURCE & AUTHORITY**

§ 18-5-207, C.R.S.

COLJI-Crim. No. 18:29 (1983).

## **CLASSIFICATION OF OFFENSE**

M2

### **5:30 DUAL CONTRACTS TO INDUCE LOAN**

The elements of the crime of dual contracts to induce loan are:

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. knowingly,
4. made, issued, delivered or received dual contracts,
5. for the purchase or sale of real property.
6. [without the affirmative defense in instruction number  
\_\_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of dual contracts to induce loan.

After considering all the evidence, if you decide the prosecution has failed to prove each of the elements beyond a reasonable doubt, you should find the defendant not guilty of dual contracts to induce loan.

#### **NOTES ON USE**

When this instruction is used, the applicable definition of "dual contracts" and "knowingly" must be given. Dual contracts can be either written or oral and means two separate contracts concerning the same parcel of real property, one of which states the true and actual purchase price and one of which states a purchase price in excess of the true and actual purchase price, and is used, or intended to be used, to induce persons to make a loan or

a loan commitment on such real property in reliance upon the stated inflated value.

**SOURCE & AUTHORITY**

**§ 18-5-208, C.R.S.**

COLJI-Crim. No. 18:30 (1983).

**CLASSIFICATION OF OFFENSE**

M3

**5:31 ISSUING A FALSE FINANCIAL STATEMENT**

The elements of the crime of issuing a false financial statement are:

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. with intent to defraud,
4. [knowingly made or uttered a written instrument which purported to describe the financial condition or ability to pay of any person,
5. which was false in some material respect, and]

-or-

4. [represented in writing that a written instrument purporting to describe the financial condition or ability to pay of any person as of a prior date was accurate with respect to that person's financial condition or ability to pay,
5. knowing the instrument to be materially false in that respect, and]
6. the instrument was reasonably relied upon.

7. [without the affirmative defense in instruction number \_\_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of issuing a false financial statement.

After considering all the evidence, if you decide the prosecution has failed to prove each of the elements beyond a reasonable doubt, you should find the defendant not guilty of issuing a false financial statement.

#### **NOTES ON USE**

The definition of "with intent" should be given with this instruction. Delete inapplicable bracketed material.

#### **SOURCE & AUTHORITY**

§18-5-209, C.R.S.

COLJI-Crim. No. 18:32 (1983).

#### **CLASSIFICATION OF OFFENSE**

M2

### **5:32 [ISSUING A FALSE FINANCIAL STATEMENT] [MAKING FALSE STATEMENTS] IN ORDER TO OBTAIN A FINANCIAL TRANSACTION DEVICE**

The elements of the crime of [issuing a false statement] [making false statements] in order to obtain a financial transaction device are:

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,

3. with intent to defraud

4. filed [an] [two or more] application[s] for [a] financial transaction device[s] with [an] issuer[s] and

-or-

5. [knowingly [made] [caused to be made] [a] [two or more] [statement[s]] [report[s]] with respect to his [name] [occupation] [financial condition] [assets] [liabilities] which was reasonably relied upon]

-or-

5. [knowingly and substantially overvalued any assets]

6. for the purpose of influencing the issuer to issue a financial transaction device

7. [and used such a device to obtain [property] [services] [money]]

-or-

[used two or more financial transaction devices to obtain [property] [services] [money]]

8. [without the affirmative defense in instruction number \_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of [issuing a false statement] [making false statements] in order to obtain a financial transaction device.

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of [issuing a false statement] [making false statements] in order to obtain a financial transaction device.

#### **NOTES ON USE**

The definition of "with intent" and/or "knowingly" should be given with this instruction.

Delete inapplicable bracketed material.

When this instruction is given, the definitions of "financial transaction device" and "issuer" must be given.

#### **SOURCE & AUTHORITY**

§§ 18-5-209(3), 18-5-701 and 18-5-702, C.R.S.

COLJI-Crim. No. 18:31.5 (1993).

#### **CLASSIFICATION OF OFFENSE**

M1 (if one financial statement is issued to obtain a financial transaction device used to obtain property or services or money)

F5 (if two or more financial statements are issued for obtaining two or more financial transaction devices and such devices are used to obtain property or services or money)

### **5:33 UNLAWFUL POSSESSION OF PERSONAL IDENTIFYING INFORMATION**

The elements of the crime of unlawful possession of personal identifying information are:

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. possessed the personal identifying information of another person,
4. with the intent to [use the information] [aid or permit another to use the information] [unlawfully gain a

benefit for himself/herself or another person] [injure or defraud another person],

5. [without the affirmative defense in instruction number \_\_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of unlawful possession of personal identifying information.

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of unlawful possession of personal identifying information.

#### **NOTES ON USE**

This instruction applies to crimes committed on or before June 30, 2006.

Delete inapplicable bracketed material.

The definition of "with intent" should be given with this instruction.

When this instruction is given the definition of "personal identifying information" must be given. For the purposes of this instruction, "personal identifying information" means: A social security number; a personal identification number; a password; a pass code; an official state or government-issued driver's license or identification card number; a government passport number; biometric data; an employer, student, or military identification number.

This statute was repealed effective July 1, 2006. A similar statute was enacted covering the prohibited conduct, §18-5-901, C.R.S.

#### **SOURCE & AUTHORITY**

§ 18-5-117, C.R.S. (2005).

## **CLASSIFICATION OF OFFENSE**

M1

### **5:34 THEFT OF PERSONAL IDENTIFYING INFORMATION**

The elements of the crime of theft of personal identifying information are:

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. unlawfully entered a trash receptacle and took documents from that trash receptacle,
4. with the intent to defraud another person of personal identifying information,
5. [without the affirmative defense in instruction number \_\_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of theft of personal identifying information.

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of theft of personal identifying information.

#### **NOTES ON USE**

This instruction applies to crimes committed on or before June 30, 2006.

Delete inapplicable bracketed material.

The definition of "with intent" should be given with this instruction.

When this instruction is used, the definition of "personal identifying information" must be given. For the purposes of this instruction, "personal identifying information" means: A social security number; a personal identification number; a password; a pass code; an official state or government-issued driver's license or identification card number; a government passport number; biometric data; an employer, student, or military identification number.

This statute was repealed effective July 1, 2006. A similar statute was enacted covering the prohibited conduct, §18-5-901, C.R.S.

#### **SOURCE & AUTHORITY**

§ 18-5-119, C.R.S. (2005).

#### **CLASSIFICATION OF OFFENSE**

M1

#### **5:35 GATHERING PERSONAL INFORMATION BY DECEPTION**

The elements of the crime of gathering personal information by deception are:

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. without permission or lawful authority,
4. knowingly [made] [conveyed] a materially false statement,
5. [over a computer] [over a computer network] [over the telephone] [by any electronic medium],
6. with the intent to obtain, record or access the personal identifying information of another,

7. [without the affirmative defense in instruction number \_\_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of gathering personal information by deception.

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of gathering personal information by deception.

#### **NOTES ON USE**

This instruction applies to crimes committed on or before June 30, 2006.

Delete inapplicable bracketed material.

The definition of "with intent" and/or "knowingly" should be given with this instruction.

When this instruction is used, the definition of "personal identifying information" must be given. For the purposes of this instruction, "personal identifying information" means: A social security number; a personal identification number; a password; a pass code; an official state or government-issued driver's license or identification card number; a government passport number; biometric data; an employer, student, or military identification number.

This statute was repealed effective July 1, 2006. A similar statute was enacted covering the prohibited conduct, §18-5-901, C.R.S. See COLJI-Crim. No. 5:54 (2007)

#### **SOURCE & AUTHORITY**

§ 18-5-120, C.R.S. (2005).

## CLASSIFICATION OF OFFENSE

M1

### 5:36 FRAUD IN EFFECTING SALES

The elements of the crime of fraud in effecting sales are:

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. in the course of business,
4. knowingly,
5. [used, or possessed for use, any false weight or measure, or any other device for falsely determining or recording any quality or quantity] [sold, offered, or exposed for sale, or delivered less than the represented quantity of any commodity or service] [took or attempted to take more than the represented quantity of any commodity or service when, as the buyer, furnished the weight or measure] [sold, offered, or exposed for sale an adulterated or mislabeled commodity] [made a false or misleading statement in any advertisement addressed to the public or to a substantial segment thereof for the purpose of promoting the purchase or sale of property or services].
6. [without the affirmative defense in instruction number  
\_\_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of fraud in effecting sales.

After considering all the evidence, if you decide the prosecution has failed to prove each of the elements beyond a reasonable doubt, you should find the defendant not guilty of fraud in effecting sales.

#### **NOTES ON USE**

Delete inapplicable bracketed material.

The definition of "knowingly" should be given with this instruction.

When this instruction is used, the applicable definitions of "adulterated" and "mislabeled" must be given.

#### **SOURCE & AUTHORITY**

§ 18-5-301, C.R.S.

COLJI-Crim. No. 18:33 (1983).

#### **CLASSIFICATION OF OFFENSE**

M2

#### **5:37 BAIT ADVERTISING**

The elements of the crime of bait advertising are:

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. offered property or services in any manner, including advertising or other means of communication,
4. as part of a scheme or plan,
5. with intent, plan, or purpose not to sell or provide the offered property or service [at all] [at the price at which the defendant offered it] [in a quantity sufficient to meet the reasonable expected public demand, unless the quantity offered is specifically stated in the advertisement].
6. [without the affirmative defense in instruction number]

\_\_\_\_\_. ]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of bait advertising.

After considering all the evidence, if you decide the prosecution has failed to prove each of the elements beyond a reasonable doubt, you should find the defendant not guilty of bait advertising.

#### **NOTES ON USE**

Delete inapplicable bracketed material.

The definition of "with intent" should be given with this instruction.

See special rule on "bait advertising", 18(31), at the end of this chapter.

#### **SOURCE & AUTHORITY**

§ 18-5-303, C.R.S.

COLJI-Crim. No. 18:36 (1983).

#### **CLASSIFICATION OF OFFENSE**

M2

#### **5:38 FALSE STATEMENTS AS TO CIRCULATION**

The elements of the crime of false statements as to circulation are:

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. knowingly made any untrue or misleading statement,

4. concerning the circulation of a newspaper, magazine, periodical, or other advertising medium published in Colorado,

5. while the defendant was engaged in the publication of such newspaper, magazine, periodical, or other advertising medium, or was an employee of such a publisher,

6. where such publisher fixes his charges for advertising space in such publication based upon the amount of its circulation.

7. [without the affirmative defense in instruction number \_\_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of false statements as to circulation.

After considering all the evidence, if you decide the prosecution has failed to prove each of the elements beyond a reasonable doubt, you should find the defendant not guilty of false statements as to circulation.

#### **SOURCE & AUTHORITY**

§ 18-5-304, C.R.S.

COLJI-Crim. No. 18:37 (1983).

#### **CLASSIFICATION OF OFFENSE**

PO1

#### **5:39 ALTERING AN IDENTIFICATION NUMBER**

The elements of the crime of altering an identification number are:

1. That the defendant,

2. in the State of Colorado, at or about the date and place charged,

3. with intent that identification of an article be hindered or prevented,

4. [obscured an identification number] [in the course of business sold, offered for sale, leased, or otherwise disposed of an article with knowledge that an identification number thereon was obscured].

5. without the affirmative defense in instruction number \_\_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of altering an identification number.

After considering all the evidence, if you decide the prosecution has failed to prove each of the elements beyond a reasonable doubt, you should find the defendant not guilty of altering an identification number.

#### **NOTES ON USE**

Delete inapplicable bracketed material.

The committee takes no position as to whether or not the following provision of the statute is the proper subject of an instruction: "Possession of an article on which an identification number is obscured is prima facie evidence that the person possessing it obscured the number with intent to hinder or prevent identification of the article, and that he knows that the identification number is obscured, unless, prior to his arrest or the issuance of a warrant for a search of the premises where the article is kept, whichever is earlier, he reports possession of the article to the police or other appropriate law enforcement agency."

§ 18-5-305(4), C.R.S.

When this instruction is used, the applicable definitions of "identification number" and "obscure" must be given.

**SOURCE & AUTHORITY**

§ 18-5-305(1), (5), C.R.S.

COLJI-Crim. No. 18:38 (1983).

**CLASSIFICATION OF OFFENSE**

M3

**5:40 UNLAWFUL SALE OF A LOTTERY TICKET**

The elements of the crime of unlawful sale of a lottery ticket are:

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. sold a lottery ticket or share,
4. [at a price greater than or less than that fixed by the Commission] [without authorization or licensing by the director to do so] [to any person under eighteen years of age] [at a place other than that place authorized and specified on the license].
5. [without the affirmative defense in instruction number  
\_\_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of unlawful sale of a lottery ticket.

After considering all the evidence, if you decide the prosecution has failed to prove each of the elements beyond a reasonable doubt, you should find the defendant not guilty of unlawful sale of a lottery ticket.

#### **NOTES ON USE**

Delete inapplicable bracketed material.

When this instruction is used, the applicable definitions of "lottery ticket," "share," "commission," and "director" must be given.

#### **SOURCE & AUTHORITY**

§ 24-35-214(a), (b), (c) and (d), C.R.S.

COLJI-Crim. No. 18:40 (1983).

#### **CLASSIFICATION OF OFFENSE**

M2

#### **5:41 UNLAWFUL PURCHASE OF A LOTTERY TICKET**

The elements of the crime of unlawful purchase of a lottery ticket are:

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. purchased a lottery ticket or share, and
4. was under eighteen years of age at the time of the purchase.
5. [without the affirmative defense in instruction number  
\_\_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of unlawful purchase of a lottery ticket.

After considering all the evidence, if you decide the prosecution has failed to prove each of the elements beyond

a reasonable doubt, you should find the defendant not guilty of unlawful purchase of a lottery ticket.

#### **NOTES ON USE**

Delete inapplicable bracketed material.

When this instruction is used, the definition of "lottery ticket" and "share" must be given.

#### **SOURCE & AUTHORITY**

§ 24-35-214(c), C.R.S.

COLJI-Crim. No. 18:41 (1983).

#### **CLASSIFICATION OF OFFENSE**

M2

### **5:42 UNLAWFUL WORKER'S COMPENSATION CLAIMS**

The elements of the crime of fraudulent Worker's Compensation claims are:

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. did willfully,
4. while under oath,
5. make a false [statement] [representation]
6. for the purpose of obtaining any [order] [benefit] [award] [compensation] [payment] from the Worker's Compensation Commission
7. [without the affirmative defense in instruction number \_\_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of fraudulent Worker's Compensation claims.

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of fraudulent Worker's Compensation claims.

#### **NOTES ON USE**

Delete inapplicable bracketed material.

The definition of " "willfully" should be given with this instruction.

#### **SOURCE & AUTHORITY**

§ 8-43-402, C.R.S.

COLJI-Crim. No. 18:42 (1993).

#### **CLASSIFICATION OF OFFENSE**

F5 and forfeiture of benefits

*Walford v. Pinnacol*, 107 P.3d 907 (Colo. 2005) (claimant only forfeits benefits that were obtained by the false statements).

### **5:43 UNLAWFULLY ACTING IN THE CAPACITY OF AN OUTFITTER**

The elements of the crime of unlawfully acting in the capacity of an outfitter are:

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. knowingly

4. acted in the capacity of an outfitter,
5. [without being licensed] [after having a license suspended or revoked] by the Colorado Outfitters Licensing Board.
6. [without the affirmative defense in instruction number' \_\_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of unlawfully acting in the capacity of an outfitter.

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of unlawfully acting in the capacity of an outfitter.

#### **NOTES ON USE**

Definition of "outfitter" must be given with this instruction.

#### **SOURCE & AUTHORITY**

§§ 12-55.5-107 and 12-55.5-108, C.R.S.  
COLJI-Crim. No. 18:43 (1993).

#### **CLASSIFICATION OF OFFENSE**

M2

### **5:44 COMPUTER CRIME - UNAUTHORIZED ACCESS**

The elements of the crime of computer crime - unauthorized access are:

1. That the defendant,

2. in the State of Colorado, at or about the date and place charged,

3. accessed a computer, computer network, computer system or any part thereof without authorization,

-or-

exceeded authorized access to a computer, computer network or computer system or any part thereof,

-or-

used a computer, a computer network or computer system, or any part thereof, without authorization or in excess of authorized access,

4. [without the affirmative defense in instruction number \_\_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of computer crime - unauthorized access.

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of computer crime - unauthorized access.

#### **NOTES ON USE**

Delete inapplicable bracketed material. When this instruction is used, the definitions of "authorization," "computer," "computer network", "computer system," "exceed authorized access," "computer software" and "computer program" must be given.

#### **SOURCE & AUTHORITY**

§ 18-5.5-102(1)(a), C.R.S.

COLJI-Crim. No. 18:44 and 18:45 (1993).

## **CLASSIFICATION OF OFFENSE**

F6, if prior conviction

M2, if no prior conviction

## **5:45 COMPUTER CRIME**

The elements of the crime of computer crime are:

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. [accessed any computer, computer network or computer system, or any part thereof for the purpose of devising or executing any scheme or artifice to defraud, and]

-or-

[accessed any computer, computer network or computer system, or any part thereof, to obtain by means of false or fraudulent pretenses, representations, promises: [money] [property] [services] [other thing of value] [passwords or similar information through which a computer, computer network or computer system or any part thereof may be accessed], and, ]

-or-

[accessed any computer, computer network or computer system or any part thereof to commit theft, and]

-or-

[without authorization or in excess of authorized access, altered, damaged, interrupted or caused the interruption or impairment of the proper functioning of or caused any damage to any [computer] [computer network] [computer system] [computer software, program, application, documentation or data contained in such computer, computer network or computer system or any part thereof], and]

-or-

[caused the transmission of a computer program, software, information, code, data or command by means of a computer, computer network or computer system or any part thereof [with the intent to cause damage to or cause the interruption or impairment of the proper functioning of] [that actually caused damage to or the interruption or impairment of the proper functioning of any computer, computer network, computer system or part thereof,] and]

4. the [loss] [damage] [value of services or thing of value taken] [cost of restoration or repair] was [less than \$500] [\$500 or more but less than \$1,000] [\$1,000 or more but less than \$20,000] [\$20,000 or more].

-or-

the [loss] [damage] [value of services or thing of value taken] [cost of restoration or repair] was [less than \$100] [\$100 or more but less than \$500] [\$500 or more but less than \$15,000] [\$15000 or more].

5. [without the affirmative defense in instruction number \_\_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of computer crime.

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of computer crime.

#### **NOTES ON USE**

The values changed for offenses committed on or after July 1, 2007.

Delete inapplicable bracketed material.

When this instruction is used, the applicable definitions of "authorization", "computer", "computer network", "computer program", "computer software", "computer system", "damage", "exceed authorized access", "financial instrument", "property", "services" and "use"

must be given. When § 18-5.5-102(1)(d), C.R.S. is charged, the elements of the crime of theft must be given.

#### **SOURCE & AUTHORITY**

§ 18-5.5-102, C.R.S.

COLJI-Crim. No. 18:44 and 18:45 (1993).

#### **CLASSIFICATION OF OFFENSE**

F3, damage equal to or greater than \$20,000

F4, damage \$1,000 to \$20,000

M1, damage \$500 to \$1,000

M2, damage less than \$500

F3, damage equal to or greater than \$15,000

F4, damage \$500 to \$15,000

M2, damage \$100 to \$500

M3, damage less than \$100

#### **5:46 UNAUTHORIZED SALE OF SECONDHAND PROPERTY**

The elements of the crime of unauthorized sale of second hand property are:

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. knowingly,
4. acted as a secondhand dealer,
5. and made a sale of secondhand property and

6. failed to adhere to the recordation requirements for such sales (insert specific omissions from C.R.S. § 18-13-114(1)-(2).

7. [without the affirmative defense in instruction number \_\_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of unauthorized sale of secondhand property.

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of unauthorized sale of Secondhand property.

#### **NOTES ON USE**

Delete inapplicable bracketed material.

When this instruction is given, the appropriate definitions of "secondhand dealer", and "secondhand property" must also be given. For second offense see Chapter 27.

#### **SOURCE & AUTHORITY**

§ 18-13-114(6)(a), .C.R.S.

COLJI-Crim. No. 18:47 (1993).

#### **CLASSIFICATION OF OFFENSE**

F5 for second offense within 3 years

M1

## **5:47 MISREPRESENTING TRANSACTIONS IN SECONDHAND PROPERTY**

The elements of the crime of misrepresenting transactions in secondhand property are:

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. knowingly
4. [acted as a buyer or a secondhand dealer] [traded with a secondhand dealer] [acted as a secondhand dealer] who
5. gave false information with respect to the recordation requirements for such sales (insert specific omissions from §18-13-114(1)-(2), C.R.S.).
6. [without the affirmative defense in instruction number \_\_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of misrepresenting transactions in secondhand property.

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of misrepresenting transactions in secondhand property.

### **NOTES ON USE**

Delete inapplicable bracketed material.

When this instruction is given, the appropriate definitions of "secondhand dealer", and "secondhand property" must also be given.

**SOURCE & AUTHORITY**

§ 18-13-114(6)(b), C.R.S.

COLJI-Crim. No. 18:48 (1993).

**CLASSIFICATION OF OFFENSE**

M1

**5:48 FRAUDULENTLY PROCURING DISASTER RELIEF FUNDS**

The elements of the crime of fraudulently procuring disaster relief funds are:

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. [with intent to defraud] [willfully] made a misstatement of fact in connection with an application for disaster relief, and
4. received disaster relief assistance to which [he] [she] was not entitled
5. [without the affirmative defense in instruction number \_\_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of fraudulently procuring disaster relief funds.

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of fraudulently procuring disaster relief funds.

**NOTES ON USE**

Delete inapplicable bracketed material.

**SOURCE & AUTHORITY**

§ 24-32-2503, C.R.S.

COLJI-Crim. No. 18:48 (1993).

**CLASSIFICATION OF OFFENSE**

F5

**5:49 FRAUDULENT PRACTICE BY A PRIVATE EMPLOYMENT AGENCY**

The elements of the crime of fraudulent practice by a private employment agency are:

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. was [a private employment agency] [an employee of a private employment agency], and
4. knowingly

[received a fee from an applicant where no written contractual agreement which included specific provisions for refunds [and extended payment options] [and specific exclusions of payment options] existed]

-or-

[charged a fee before an applicant was placed in employment]

-or-

[required a fee in excess of one percent of the total fee for each calendar day elapsed between the beginning and termination of employment, where employment was terminated within one hundred days]

-or-

[failed to refund after written notification to the private employment agency of the termination of an applicant's employment that portion of the fee paid by an applicant in excess of one percent of the total fee for each calendar day elapsed between the beginning and termination of employment where employment was terminated within one hundred days]

-or-

[sent an applicant to any fictitious job or position]

-or-

[made any false representation concerning the availability of employment]

-or-

[sent an applicant to any place where a strike or lockout existed or was impending without notifying the applicant of the circumstances]

-or-

[conspired or arranged with any employer to secure the discharge of an employee]

-or-

[gave or received any gratuity or divide or share with an employer any fee, charge, or remuneration received from any applicant for employment]

-or-

[circulated or published, by advertisement or otherwise, any false statements or representations to [persons seeking employment] [employers seeking employees]

-or-

[a. failed, within seven calendar days of the agency's receipt of written notification of the termination of employment, or upon the determination that the

instrument used to pay the fee was backed by sufficient funds, whichever last occurred,

b. to refund fees to an applicant in excess of one percent of the total fee for each calendar day elapsed between the beginning and termination of employment,

c. where the applicant's employment terminated for any reason within one hundred calendar days]

-or-

[advertised or represented that an available position was available on a free or no-fee basis where no cost would accrue to the applicant, if hired in such a manner as to confuse such position with other available positions which were not available on a fee-paid basis]

-or-

[advertised or represented that an available position was available on a free or no-fee basis or otherwise indicated that no charge or cost would accrue to anyone when in fact the employer was obligated to pay a fee contingent upon the acceptance of employment of the applicant]

-or-

[advertised for any position, including personnel for its own staff, without identifying in the advertisement that it is a private employment agency]

5. [without the affirmative defense in instruction number \_\_\_\_\_].

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of fraudulent practice by a private employment agency.

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of fraudulent practice by a private employment agency.

#### **NOTES ON USE**

Delete inapplicable bracketed material.

When this instruction is used, the appropriate definitions of "applicant," "employment," "total fee," "private employment agency," and "knowingly" must be given.

#### **SOURCE & AUTHORITY**

§ 18-5-307, C.R.S.

COLJI-Crim. No. 35:41 (1993).

#### **CLASSIFICATION OF OFFENSE**

A defendant convicted under this section may be required to post a bond, and considered a public nuisance.

### **5:50 EQUITY SKIMMING OF REAL PROPERTY**

The elements of the crime of equity skimming of real property are:

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. acquired an interest in real property which is encumbered by a loan secured by a mortgage or deed of trust and the loan [is in arrears at the time s/he acquired the interest] [is placed in default within eighteen months after the acquisition of such interest in the real property], and
4. failed to apply all rent derived from his/her interest in the real property first toward the satisfaction of all outstanding payments due on the loan and second toward any fees due any association of real property owners which charges such fees for the upkeep of the housing facility or common area including buildings and grounds thereof, of which the real property is a part before

appropriating the remainder of such rent or any part thereof for any other purpose except the purpose of repairs necessary to prevent waste of the real property.

5. [without the affirmative defense in instruction number \_\_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of equity skimming of real property.

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of equity skimming of real property.

#### **NOTES ON USE**

Delete inapplicable bracketed material. When this instruction is given, the applicable definitions of "real property", "rent" and "security interest" must be given. Affirmative defenses are contained in § 18-5-802(4)(a) and (b), C.R.S.

#### **SOURCE & AUTHORITY**

§ 18-5-802, C.R.S.

#### **CLASSIFICATION OF OFFENSE**

F5

#### **5:51 EQUITY SKIMMING OF A VEHICLE**

The elements of the crime of equity skimming of a vehicle are:

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,

3. knowing that the vehicle is subject to a security interest, lien or lease, (s)he accepted possession of or exercised any control over the vehicle in exchange for consideration given, which was verbal assurance or otherwise, and

4. obtained or exercised control over the vehicle of another and then sold or leased the vehicle to a third party without first obtaining written authorization from the secured creditor, lessor or lienholder for the transaction of the sale or lease to the third party, without the entire balance of the security interest, lien or lease being paid or satisfied within thirty days of the transaction,

-or-

arranged the sale or lease of the vehicle of another to a third party without first obtaining written authorization from the secured creditor, lessor or lienholder for the transaction of the sale or lease to the third party and exercises control over any part of the funds received, when the entire balance of the security interest, lien or lease was not paid or satisfied within thirty days of the transaction,

-or-

knowingly failed to ascertain on a monthly basis whether payments were due to the secured creditor, lienholder or lessor and apply all funds (s)he received for any lease or sale of the vehicle toward the satisfaction of any outstanding payment due to the secured creditor, lienholder or lessor in a timely manner.

5. [without the affirmative defense in instruction number \_\_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of equity skimming of a vehicle.

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of equity skimming of a vehicle.

#### **NOTES ON USE**

Delete inapplicable bracketed material. When applicable, the definitions of "lease", "security interest" and "vehicle" must be given with this instruction.

#### **SOURCE & AUTHORITY**

§ 18-5-803, C.R.S.

#### **CLASSIFICATION OF OFFENSE**

F6

### **5:52 FAILING TO COMPLY WITH THE "TRUST COMPANIES ACT"**

The elements of the crime of failing to comply with the "Trust Companies Act" are:

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. [[carried on] [conducted] a trust company business]  
[[advertised] [held [him] [her] self out] as being  
[engaged in] [doing a] trust company business]  
[used the [word "trust"] [words "trust company"] in  
connection with its business]
4. without being in compliance with (insert the  
provisions of C.R.S. § Title 11, Article 23 or other  
statutory requirements)
5. [without the affirmative defense in instruction  
number \_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of failing to comply with the "Trust Companies Act".

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of failing to comply with the "Trust Companies Act".

#### **NOTES ON USE**

Delete inapplicable bracketed material.

When this instruction is given, the definition of "trust company" must be given. A "trust company" is a corporation organized and regulated pursuant to § 11-109-101, *et seq.*, C.R.S.

#### **SOURCE & AUTHORITY**

§ 11-109-602, C.R.S.

COLJI-Crim. No. 18:46 (1993).

#### **CLASSIFICATION OF OFFENSE**

M (fine not to exceed \$1,000 or up to a year in the County Jail, or both)

#### **5:53 IDENTITY THEFT**

The elements of the crime of Identity Theft are:

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. [knowingly used the [personal identifying information] [financial identifying information] [financial device] of another without permission or lawful authority to obtain cash, credit, property, services, or any other thing of value or to make a financial payment or attempted, conspired with another or solicited another to commit any of the acts set forth in these paragraph;]

-or-

[knowingly possessed the [personal identifying information] [financial identifying information] [financial device] of another without permission or lawful authority, with the intent to use or to aid or permit some other person to use such information or device to obtain cash, credit, property, services, or any other thing of value or to make a financial payment or solicited another to commit any of the acts set forth in these paragraphs,]

-or-

[with the intent to defraud, falsely made, completed, altered, or uttered a written instrument or financial device containing any personal identifying information or financial identifying information of another or solicited another to commit any of the acts set forth in these paragraphs;]

-or-

[knowingly possessed the [personal identifying information] [financial identifying information] of another without permission or lawful authority to use in applying for or completing an application for a financial device or other extension of credit or solicited another to commit any of the acts set forth in these paragraphs;]

-or-

[knowingly used or possessed the personal identifying information of another without permission or lawful authority with the intent to obtain a government-issued document or solicited another to commit any of the acts set forth in these paragraphs.]

4. [without the affirmative defense in instruction number \_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of identity theft.

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of identity theft.

#### **NOTES ON USE**

This statute applies to offenses committed on or after July 1, 2006.

Delete inapplicable bracketed material.

When this instruction is given the mental states of "knowingly" and 'with intent' should be given where applicable.

The following definitions should be given where applicable:

1. "Account holder" means any person or business entity named on or associated with the account or named on the face of a financial device to whom or for whose benefit the financial devise is issued by an issuer.

2. "Extension of credit" means any loan or agreement, express or implied, whereby the repayment or satisfaction of any debt or claim, whether acknowledged or disputed, valid or invalid, and however arising, may or will be deferred.

3. To "falsely alter" a written instrument or financial device means to change a written instrument or financial device without the authority of anyone entitled to grant such authority, whether it be in complete or incomplete form, by means of erasure, obliteration, deletion, insertion of new matter, transposition of matter, or any other means, so that the written instrument or financial device in its thus altered form falsely appears or purports to be in all respects an authentic creation of or fully authorized by its ostensible maker.

4. To "falsely complete" a written instrument or financial device means:

a. To transform an incomplete written instrument or financial device into a complete one by adding, inserting, or changing matter without the authority of anyone entitled to grant that authority, so that the complete written instrument or financial device falsely appears or purports to be in all respects an authentic creation of or fully authorized by its ostensible maker; or

b. To transform an incomplete written instrument or financial device into a complete one by adding or inserting materially false information or adding or inserting a materially false statement. A materially false statement is a false assertion that affects the action, conduct, or decision of the person who received or is intended to receive the asserted information in a manner that directly or indirectly benefits the person making the assertion.

5. To "falsely make" a written instrument or financial device means to make or draw a written instrument or financial device, whether it be in complete or incomplete form, that purports to be an authentic creation of its ostensible maker, but that is not, either because the ostensible maker is fictitious or because, if real, the ostensible maker did not authorize the making or the drawing of the written instrument or financial device.

6. "Financial device" means any instrument or device that can be used to obtain cash, credit, property, services, or any other thing of value or to make financial payments, including but not limited to:

- a. A credit card, banking card, debit card, electronic fund transfer card, or guaranteed check card;
- b. A check;
- c. A negotiable order of withdrawal
- d. A share draft; or
- e. A money order.

7. "Financial identifying information" means any of the following that can be used, alone or in conjunction with any other information, to obtain cash, credit, property, services, or any other thing of value or to make a financial payment:

- a. A personal identification number, credit card number, banking card number, checking account number, debit card number, electronic fund transfer card number, guaranteed check card number, or routing number; or

b. A number representing a financial account or a number affecting the financial interest, standing, or obligation of or to the account holder.

8. "Government" means:

a. The United States and its departments, agencies, or subdivisions;

b. A state, county, municipality, or other political unit and its departments, agencies, or subdivisions; and

c. A corporation or other entity established by law to carry out government functions.

9. "Issuer" means a person, a banking, financial, or business institution, or a corporation or other business entity that assigns financial rights by acquiring, distributing, controlling or, canceling an account or a financial device.

10. "Number" includes, without limitation, an grouping or combination of letters, numbers, or symbols.

11. "Of another" means that of a natural person, living or dead, or a business entity as defined in section 16-3-301.1 (11) (b), C.R.S.

12. "Personal identification number" means a number assigned to an account holder by an issuer to permit authorized use of an account or financial device.

13. "Personal identifying information" means information that may be used, alone or in conjunction with any other information, to identify a specific individual, including but not limited to a name; a date of birth; a social security number; a password; a pass code; an official, government-issued driver's license or identification card number; a government passport number; biometric data; or an employer, student, or military identification number.

14. "Utter" means to transfer, pass, or deliver, or to attempt or cause to be transferred, passed, or delivered, to another person a written instrument or financial device, article, or thing.

15. "Written instrument" means a paper, document, or other instrument containing written or printed matter or the equivalent thereof, used for purposes of reciting, embodying, conveying, or recording information, and any money, token, stamp, seal, badge, or trademark or any evidence or symbol of value, right, privilege, or identification, that is capable of being used to the advantage or disadvantage of another.

**SOURCE & AUTHORITY**

§ 18-5-902, C.R.S.

**CLASSIFICATION OF OFFENSE**

F-4

**5:54 GATHERING IDENTITY INFORMATION BY DECEPTION**

The elements of the crime of gathering identity information by deception are:

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. without permission or lawful authority,
4. knowingly [made] [conveyed] a materially false statement,
5. [over a computer] [over a computer network] [over the telephone] [by any electronic medium],
6. with the intent to obtain, record or access [the personal identifying information] [financial identifying information] of another,
7. [without the affirmative defense in instruction number \_\_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a

reasonable doubt, you should find the defendant guilty of gathering identity information by deception.

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of gathering identity information by deception.

#### **NOTES ON USE**

This instruction applies to crimes committed on or after July 1,, 2006.

Delete inapplicable bracketed material.

When this instruction is given the mental states of "knowingly" and 'with intent" should be given where applicable.

The following definitions are applicable to this instruction:

"Financial identifying information" means any of the following that can be used, alone or in conjunction with any other information, to obtain cash, credit, property, services, or any other thing of value or to make a financial payment:

(a) a personal identification number, credit card number, banking card number, checking account number, debit card number, electronic fund transfer card number, guaranteed check card number, or routing number; OR (b) a number representing a financial account or a number affecting the financial interest, standing, or obligation of or to the account holder.

"Personal identifying information" means information that may be used, alone or in conjunction with any other information, to identify a specific individual, including but not limited to a name; a date of birth, a social security number; a password; a pass code; an official, government-issued driver's license or identification card number; a government passport number; biometric data; or an employer, student, or military identification number.

**SOURCE & AUTHORITY**

§ 18-5-904, C.R.S.

**CLASSIFICATION OF OFFENSE**

F-5

**5:55 POSSESSION OF IDENTITY THEFT TOOLS**

The elements of the crime of possession of identity theft tools are:

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. knowingly possessed any tools, equipment, computer, computer network, scanner, printer, or other article adapted, designed or commonly used for committing or facilitating the commission of identity theft,
4. with the intent to use the thing possessed or knows that a person intends to use the thing possessed in the commission of identity theft.
5. [without the affirmative defense in instruction number \_\_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of possession of identity theft tools.

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of possession of identity theft tools.

**NOTES ON USE**

This instruction applies to crimes committed on or

after July 1,, 2006.

Delete inapplicable bracketed material.

When this instruction is given the mental states of "knowingly" and 'with intent" should be given where applicable.

The elemental instruction on identity theft, COLJI-Crim. 5:53 should be given with this instruction.

#### **SOURCE & AUTHORITY**

§ 18-5-905, C.R.S.

#### **CLASSIFICATION OF OFFENSE**

F-5

#### **DEFINITIONS**

##### **5(1) ADULTERATED**

"ADULTERATED" means varying from the standard of composition or qualify prescribed by, or pursuant to any statute of the State of Colorado or the United States providing criminal penalties for such variance, or set by established commercial usage. § 18-5-301 (1)(d), C.R.S.

##### **5(2) ACCOUNT HOLDER**

"ACCOUNT HOLDER" means the person or business entity named on the face of a financial transaction device to whom or for whose benefit the financial transaction device is issued by an insurer. § 18-5-701, C.R.S.

##### **5(3) APPLICANT**

"APPLICANT" means any person applying to a private employment agency in order to secure employment with any

person, firm, association, or corporation other than the private employment agency. § 18-5-307, C.R.S..

#### **5(4) AUTHORIZATION**

"AUTHORIZATION" means the express consent of a person which may include an employee's job description to use said person's computer, computer network, computer program, computer software, computer system, property, or services. § 18-5.5-101(1), C.R.S.

#### **5(5) BY DECEPTION**

"BY DECEPTION" means by knowingly [creating or confirming another's impression that is false and which the deceiver does not believe to be true] [failing to correct a false impression held by another which the deceiver previously has created or confirmed] [preventing another from acquiring information pertinent to any matter material to a proper understanding of any transaction in which the signature of such person is procured]. §18-5-112(2), C.R.S.

#### **5(6) CHECK**

"CHECK" means a written, unconditional order to pay a sum certain in money, drawn on a bank, payable on demand, and signed by the drawer. "Check" also includes a negotiable order of withdrawal and a share draft. §18-5-205(1)(a), C.R.S.

#### **NOTES ON USE**

This definition of "check" should be used in reference to § 18-5-205, C.R.S.

#### **5(7) COMPLETE WRITTEN INSTRUMENT**

"COMPLETE WRITTEN INSTRUMENT" means one which purports to be a genuine written instrument fully drawn with respect to every essential feature thereof. § 18-5-101(1), C.R.S.

## **5(8) COIN MACHINE**

"COIN MACHINE" means a coin box, turnstile, vending machine, or other mechanical or electronic device or receptacle designed to receive a coin or bill of a certain denomination or token made for the purpose, and in return for the insertion or deposit thereof, to offer, to provide, to assist in providing or to permit the acquisition of some property or some public or private service. § 18-5-111(2), C.R.S.

## **5(9) COMPUTER**

"COMPUTER" means an electronic device which performs logical, arithmetic, or memory functions by the manipulations of electronic or magnetic impulses, and includes all input, output, processing, storage, software, or communication facilities that are connected or related to such a device in a system or network. § 18-5.5-101(2), C.R.S.

## **5(10) COMPUTER NETWORK**

"COMPUTER NETWORK" means the interconnection of communication lines (including microwave or other means of electronic communication) with a computer through remote terminals, or a complex consisting of two or more interconnected computers. § 18-5.5-101(3), C.R.S.

## **5(11) COMPUTER PROGRAM**

"COMPUTER PROGRAM" means a series of instructions or statements, in a form acceptable to a computer, which permits the functioning of a computer system in a manner designed to provide appropriate products from such computer system. § 18-5.5-101(4), C.R.S.

## **5(12) COMPUTER SOFTWARE**

"COMPUTER SOFTWARE" means computer programs, procedures, and associated documentation concerned with the operation of a computer system. § 18-5.5-101(5), C.R.S.

## **5(13) COMPUTER SYSTEM**

"COMPUTER SYSTEM" means a set of related, connected or unconnected, computer equipment, devices and software. § 18-5.5-101(6), C.R.S.

## **5(14) DAMAGE**

"DAMAGE" includes, but is not limited to, any impairment to the integrity of availability of information, data, computer program, computer software, or services on or via a compute, computer network, or computer system or part thereof. § 18-5.5-101(6.3), C.R.S.

## **5(15) DOCUMENT-MAKING IMPLEMENT**

"DOCUMENT-MAKING IMPLEMENT" means any implement or impression, including, but not limited to, a template or a computerized template or form, specially designed or primarily used for making identification documents, false identification documents, or another document-making implement. § 18-5-101(1.5), C.R.S.

## **5(16) DRAWEE**

"DRAWEE" means the bank upon which a check is drawn or a bank, savings and loan association, industrial bank, or credit union on which a negotiable order of withdrawal or a share draft is drawn. §18-5-205(l)(b), C.R.S.

## **5(17) EMPLOYMENT**

"EMPLOYMENT" means every character of service rendered or to be rendered for wages, salary, commission, or other form of remuneration. § 18-5-307(1)(b), C.R.S.

## **5(18) EXCEED AUTHORIZED ACCESS**

"EXCEED AUTHORIZED ACCESS" means to access a computer with authorization and to use such access to obtain or alter information, data, computer program, or computer

software that the person is not entitled to so obtain or alter. §18-5.5-101(6.7), C.R.S.

### **5(19) TO FALSELY ALTER**

"TO FALSELY ALTER" a written instrument means to change a written instrument without the authority of anyone entitled to grant such authority, whether it be in complete or incomplete form, by means of erasure, obliteration, deletion, insertion of new matter, transposition of matter, or any other means, so that such instrument in its thus altered form falsely appears or purports to be in all respects an authentic creation of or fully authorized by its ostensible maker. § 18-5-101(2), C.R.S.

#### **NOTES ON USE**

Use with reference to §§ 18-5-101 through -110, C.R.S.

### **5(20) TO FALSELY COMPLETE**

"TO FALSELY COMPLETE" a written instrument means:

(a) to transform an incomplete written instrument into a complete one by adding, inserting, or changing matter without the authorization of anyone entitled to grant that authority, so that the complete written instrument falsely appears or purports to be in all respects an authentic creation of or fully authorized by its ostensible maker; or

(b) to transform an incomplete written instrument into a complete one by adding or inserting materially false information or adding or inserting a materially false statement. A materially false statement is a false assertion that affects the action, conduct, or decision of the person who receives or is intended to receive the asserted information in a manner that directly or indirectly benefits the person making the assertion. § 18-5-101(3), C.R.S.

## **NOTES ON USE**

Use with reference to §§ 18-5-101 through -110, C.R.S.

### **5(21) FALSELY ALTER**

"FALSELY ALTER" means to change such device without the authority of anyone entitled to grant such authority, whether it be in complete or in incomplete form, by means of erasure, obliteration, deletion, insertion of new matter, transposition of matter, or any other means, so that such device in its thus altered form falsely appears or purports to be in all respects an authentic creation of or fully authorized by its ostensible issuer. § 18-5-707(2)(a), C.R.S.

### **5(22) FALSELY COMPLETE**

"FALSELY COMPLETE" means to transform an incomplete device into a complete one by adding, inserting, or changing matter without the authority of anyone entitled to grant that authority, so that the complete device falsely appears or purports to be in all respects an authentic creation of or fully authorized by its ostensible issuer. § 18-5-707(2)(b), C.R.S.

### **5(23) FALSELY MAKE**

"FALSELY MAKE" means to make or manufacture a device, whether complete or incomplete, which purports to be an authentic creation of its ostensible issuer, but which is not, either because the ostensible issuer is fictitious or because, if real, he did not authorize the making or the manufacturing thereof. § 18-5-707(2)(c), C.R.S.

### **5(24) FEE-PAID POSITION**

"FEE-PAID POSITION" means a position of employment which is available to an applicant where no fee or cost accrues to the applicant as a condition of obtaining such position. § 18-5-307(1)(6.5), C.R.S.

## **5(25) FINANCIAL TRANSACTION DEVICE**

"FINANCIAL TRANSACTION DEVICE" means any instrument or device whether known as a credit card, banking card, debit card, electronic fun transfer card, or guaranteed check card, or account number representing a financial account or affecting the financial interest, standing, or obligation of or to the account holder, that can be used to obtain cash, goods, property, or services or to make financial payments, but shall not include a check, a negotiable order of withdrawal, or a share draft. § 18-5-701(3), C.R.S.

## **5(26) FORGED INSTRUMENT**

"FORGED INSTRUMENT" means a written instrument which has been falsely made, completed, or altered. § 18-510 1 (5), C.R.S.

### **NOTES ON USE**

Use with reference to §§ 18-5-101 through -110, C.R.S.

## **5(27) GOVERNMENT**

"GOVERNMENT" means the United States, any state, county, municipality, or other political unit, any department, agency, or subdivision of any of the foregoing, or any corporation or other entity established by law to carry out government functions. § 18-5-101(6). C.R.S.

### **NOTES ON USE**

Use with reference to §§ 18-5-101 through -110, C.R.S.

## **5(28) IDENTIFICATION DOCUMENT**

"IDENTIFICATION DOCUMENT" means a document made or issued by or under the authority of the United States government, a state, political subdivision of a state, a foreign government, political subdivision of a foreign

government, an international governmental, or an international quasi-governmental organization which, when completed with information concerning a particular individual, is of a type intended or commonly accepted for the purpose of identification of individuals. § 18-5-101(6.5), C.R.S.

### **5(29) IDENTIFICATION NUMBER**

"IDENTIFICATION NUMBER" means a serial or motor number placed by the manufacturer upon an article as a permanent individual identifying mark. §§ 18-5-305(3), C.R.S.

### **5(30) INCOMPLETE WRITTEN INSTRUMENT**

"INCOMPLETE WRITTEN INSTRUMENT" means one which contains some matter by way of content or authentication but which requires additional matter in order to render it a complete written instrument. § 18-5-101(7), C.R.S.

### **5(31) INSOLVENT**

A financial institution is "INSOLVENT" when from any cause it is unable to pay its obligations in the ordinary or usual course of business, or its liabilities exceed its assets. §18-5-210, C.R.S.

### **5(32) INSUFFICIENT FUNDS**

"INSUFFICIENT FUNDS" means a drawer has insufficient funds with the drawee to pay a check when the drawer has no checking account, negotiable order of withdrawal account, or share draft account with the drawee or has funds in such an account with the drawee in an amount less than the amount of the check plus the amount of all other checks outstanding at the time of issuance; and a check dishonored for "no account" shall also be deemed to be dishonored for "insufficient funds." § 18-5-205(l)(d), C.R.S.

### **5(33) ISSUE**

"ISSUE" means a person issues a check when he makes, draws, delivers, or passes it or causes it to be made, drawn, delivered, or passed. § 18-5-105(l)(e), C.R.S.

### **5(34) ISSUER**

"ISSUER" means any person or banking, financial, or business institution, corporation, or other business entity that assigns financial rights by acquiring, distributing, controlling, or canceling a financial transaction device. § 18-5-701, C.R.S.

### **5(35) LEASE**

"LEASE" means any grant of use and possession for consideration, with or without an option to buy. § 18-5-801(1), C.R.S.

### **5(36) MISLABLED**

"MISLABLED" means varying from the standard of truth or disclosure in labeling prescribed or pursuant to any statute of the State of Colorado or the United States providing criminal penalties for such variance, or set by established commercial usage. § 18-5-301(1)(d), C.R.S.

### **5(37) NEGOTIABLE ORDER OF WITHDRAWAL**

"NEGOTIABLE ORDER OF WITHDRAWAL" means an account in a bank, savings and loan association, or industrial bank. § 18-5-205(l)(g), C.R.S.

### **5(38) NOTICE**

"NOTICE" includes either notice given in person or notice given in writing to the person to whom the card, number, or device was issued. § 18-5-202(2), C.R.S.

## **NOTES ON USE**

Use with reference to §§ 18-5-201 through -204, C.R.S.

### **5(39) OBSCURE**

"OBSCURE" means to destroy, remove, alter, conceal, or deface as to render illegible by ordinary means of inspection. §18-5-305(3), C.R.S.

### **5(40) PRIVATE EMPLOYMENT AGENCY**

"PRIVATE EMPLOYMENT AGENCY" means:

I. any nongovernmental person, firm, association, or corporation which secures or attempts to secure employment, arranges an interview between an applicant and a specific employer other than itself, or, by any form of advertising or representation, holds itself out to a prospective applicant as able to secure employment for the applicant with any person, firm, association, or corporation other than itself, or engages in employment counseling and in connection therewith supplies or represents that it is able to supply employers or available jobs, where an applicant may become liable for the payment of a fee, either directly or indirectly.

II. "Private employment agency" also means any nongovernmental person, firm, association, or corporation which provides a list of potential employers or available jobs in a publication, if the primary purpose of the publication, as represented by the provider, is to enable applicants to find employment or to list available jobs and if the applicant is charged more than twenty dollars within any period of time of thirty days or less for access to the publication or revisions or updates thereof, unless the listings of all jobs in the publication are initiated by employers rather than the provider § 18-5-307(c), C.R.S.

## **5(41) PRODUCE**

"PRODUCE" includes alter, authenticate, or assemble. § 18-5-101(7), C.R.S.

## **5(42) PROPERTY**

"PROPERTY" includes, but is not limited to, financial instruments, information, including electronically produced date, and computer software and programs in either machine or human readable form, and any other tangible or intangible item of value. § 18-5.5-101(8), C.R.S.

## **5(43) REAL PROPERTY**

"REAL PROPERTY" means land and any interest or estate in land and includes a manufactured home as defined in section §42-1-102 (106) (b), C.R.S.

## **5(44) RENT**

"RENT" means any moneys or any other thing of value received as a payment or as a deposit for the privilege of living in or using real property. §18-5-801(3), C.R.S.

## **5(45) SALES FORM**

"SALES FORM" means any written record of a financial transaction involving use of a financial transaction device. § 18-5-701, C.R.S.

## **5(46) SECONHAND DEALER**

"SECONDHAND DEALER" means any person whose principal business is that of engaging in selling or trading secondhand property. The term also includes any person whose principal business is not that of engaging in selling or trading secondhand property but who sells or trades secondhand property through means commonly known as flea markets or any similar facilities in which secondhand property is offered for sale or trade or who sells or

trades secondhand property from a nonpermanent location. The term does not include:

I. A person selling or trading second hand property so long as such property was not originally purchased for resale and so long as such person does not sell or trade secondhand property more than five weekend period in any one calendar year.

II. A person who is a retailer (as defined in § 39-26-102, C.R.S., or a wholesaler as defined in § 39-26-102(18), C.R.S. and who is selling or trading secondhand property in a location which is a permanent storefront location.

III. A person or organization selling or trading secondhand property as an exhibition or show that is intended to display and advertise a particular commodity or class of products, including, but not limited to, antique exhibitions, home and garden shows, and recreational vehicle shows.

IV. A person or organization that is charitable, non-profit, recreational, fraternal, or political in nature or which is exempt from taxation, pursuant to 501(c)(3) of the Federal Internal Revenue Code of 1986, as amended.

V. A person selling or trading firewood, Christmas trees, plants, food products, agricultural products, fungible goods, pets, livestock, or arts and crafts, excluding jewelry and items crafted in gold or silver, if sold or traded by an artist or craftsman, his immediate family, or regular employees.

VI. A person who sells new goods exclusively, is in the business of selling such goods, is in all respects a retailer of such goods, and holds a retail license and a sales license in the city, county, or city and county in which the sale occurs.

VII. An antique dealer who sells antiques, has a retail license and sales tax license in the city, county, or city and county in which the sale occurs, and sells such antiques from a permanent store front location. § 18-13-114(5)(c), C.R.S.

## **5(47) SECONHAND PROPERTY**

"SECONDHAND PROPERTY" means the following items of tangible personal property sold or traded by a secondhand dealer:

I. Cameras, camera lenses, slide or movie projectors, projector screens, flashguns, enlargers, tripods, binoculars, telescopes, and microscopes.

II. Televisions, phonographs, tape recorders, video recorders, radios, turners, speakers, turntables, amplifiers, record changers, citizens' band broadcasting units and receivers, and video games.

III. Skis, ski poles, ski boots, ski bindings, golf clubs, guns, jewelry, coins, luggage, boots, and furs.

IV. Typewriters, adding machines, calculators, computers, portable air conditioners, cash registers, copying machines, dictating machines, automatic telephone answering machines, and sewing machines.

V. Bicycles, bicycle frames, bicycle derailleur assemblies, bicycle hand brake assemblies, and other bicycle components.

VI. Any item of tangible personal property that is marked with a serial or identification number and the selling price of which is thirty dollars or more, except motor vehicles, off highway vehicles, as defined by § 42-1-102(63), C.R.S., snowmobiles, ranges, stoves, dishwashers, refrigerators, garbage disposals, boats, airplanes, clothes washers, clothes driers, freezers, mobile homes, and nonprecious scrap metal. § 18-13-114(5)(d), C.R.S.

## **5(48) SECURITY INTEREST**

"SECURITY INTEREST" means an interest in personal property which secures payment or performance of an obligation. § 18-5-801(4), C.R.S.

## **5(49) SERVICES**

"SERVICES" includes, but is not limited to, computer time, data processing, and storage functions. § 18-5.5-101(9), C.R.S.

## **5(50) SHARE DRAFT ACCOUNT**

"SHARE DRAFT ACCOUNT" means an account in a credit union, on which payment of interest or dividends may be made on a deposit with respect to which bank, savings and loan association, or industrial bank or the credit union, as the case may be, may require the depositor to give notice of an intended withdrawal not less than thirty days before the withdrawal is made, even though in practice such notice is not required and the depositor is allowed to make withdrawal by negotiable order of withdrawal or share draft. §18-5-205(l)(g), C.R.S.

## **5(51) SLUG**

"SLUG" means any object or article which, by virtue of its size, shape, or any other quality, is capable of being inserted, deposited, or otherwise used in a coin machine as an improper but effective substitute for a genuine coin, bill, or token, and of thereby enabling a person to obtain without valid consideration the property or service sold through the machine. §18-511(3), C.R.S.

## **5(52) USE**

To "USE" means to instruct, communicate with, store data in, retrieve data from, or otherwise make use of any resources of a computer, computer system, or computer network. § 18-5.5-101(10), C.R.S.

## **5(53) UTTER**

"UTTER" means to transfer, pass, or deliver, or attempt to cause to be transferred, passed, or delivered, to another person any written instrument, article, or thing. §18-5-101(8), C.R.S.

#### **NOTES ON USE**

Use with reference to §§ 18-5-101 through -110, C.R.S.

#### **5(54) VEHICLE**

"VEHICLE" means any device of conveyance capable of moving itself or of being moved from place to place upon wheels or a track or by water or air, whether or not intended for the transport of persons or property, and includes any space within such "vehicle" adapted for overnight accommodation of persons or animals or for the carrying on of business. "Vehicle" does not include a manufactured home as defined in §42-1-102 (106) (b), C.R.S.

#### **5(55) WEIGHTS OR MEASURES**

"WEIGHTS" or "MEASURES" means all weights or measures of every kind, any instruments and devices for weighing and measuring, and any appliances and accessories associated with any or all of such instruments and devices. § 35-14-102(34), C.R.S.

#### **5(56) WRITTEN INSTRUMENT**

"WRITTEN INSTRUMENT" means any paper, document, or other instrument containing written or printed matter or the equivalent thereof, use for purposes of reciting, embodying, conveying, or recording information, and any money, credit card, token, stamp, seal, badge, or trademark, or any evidence of symbol of value, right, privilege, or identification, which is capable of being used to the advantage or disadvantage of some person § 18-5-101(9), C.R.S.

#### **NOTES ON USE**

Use with reference to §§ 18-5-101 through -110, C.R.S.

## **SPECIAL RULES**

### **5(57) BAIT ADVERTISING**

It shall be an affirmative defense that a television or radio broadcasting station or a publisher or printer of a newspaper, magazine, or other form of printed advertising which broadcast, published, or printed a false advertisement, or a telephone company which furnished service to a subscriber did so without knowledge of the advertiser's or subscriber's intent, plan, or purpose.

#### **NOTES ON USE**

This affirmative defense will apply only to publishers of the bait advertising.

#### **SOURCE & AUTHORITY**

§18-5-303(2), C.R.S.

### **5(58) MERGER OF OFFENSES-FORGERY AND POSSESSION OF A FORGED INSTRUMENT**

A person may not be convicted of both (name degree of forgery) and (name degree of criminal possession of a forged instrument) with respect to the same written instrument.

This special rule is to be used when the jury is to decide a case that has both a count of forgery and a count of criminal possession of a forged instrument, relating to the same written instrument.

#### **SOURCE & AUTHORITY**

§ 18-5-108, C.R.S.

### **5(59) PERMISSIBLE INFERENCE-FRAUD BY CHECK**

In any prosecution for fraud by check, except in the case of a postdated check or order, you may infer that the defendant had knowledge of insufficient funds if:

a. At the time s/he issued the check or order, s/he did not have an account with the bank or other drawee upon which the check or order was drawn, or

b. On presentation within thirty days after issue, s/he had insufficient funds upon deposit with the bank or other drawee to pay the check or order.

You may consider this evidence, together with all the other evidence in this case, in determining whether or not the defendant had knowledge of insufficient funds. It is entirely your decision to determine what weight should be given to this evidence.

You must bear in mind that you may but are not required to make this inference. The prosecution always has the burden of proving each element of the offense charged, beyond a reasonable doubt. The defendant is never required to present any evidence, and has no burden to prove or disprove anything.

**SOURCE & AUTHORITY**

§18-5-205(8)(a), (b), C.R.S.

*People v. Felgar*, 58 P.3d 1133 (Colo. App. 2002).