

ISSUING A BAD CHECK
(Drawer or Representative Drawer)
Penal Law § 190.05 (1)
(Committed on or after Sept. 1, 1967)

The (*specify*) count is Issuing a Bad Check.

Under our law, a person is guilty of Issuing a Bad Check when, as a drawer [or representative drawer], he [or she] utters a check knowing that he or she [or his or her principal, as the case may be], does not then have sufficient funds with the drawee to cover the check,

and he [or she] intends or believes at the time of utterance that payment will be refused by the drawee upon presentation,

and payment is refused by the drawee upon presentation.

The following terms used in that definition have a special meaning:

CHECK means any check, draft, or similar sight order for the payment of money which is not post-dated with respect to the time of utterance.¹

A person UTTERS a check when, as a drawer [or representative drawer] thereof, he or she delivers it or causes it to be delivered to a person who thereby acquires a right against the drawer with respect to such check. One who draws a check with intent that it be so delivered is deemed to have uttered it if the delivery occurs.²

¹ See Penal Law § 190.00 (1)

² See Penal Law § 190.00 (4)

DRAWER of a check means a person whose name appears thereon as the primary obligor, whether the actual signature be that of himself [or herself] or of a person purportedly authorized to draw the check in his [or her] behalf.³

[REPRESENTATIVE DRAWER means a person who signs a check as drawer in a representative capacity or as agent of the person whose name appears thereon as the principal drawer or obligor.⁴]

FUNDS means money or credit.⁵

A drawer has INSUFFICIENT FUNDS with a drawee to cover a check when he or she has no funds or account whatever, or funds in an amount less than that of the check; and a check dishonored for “no account” shall also be deemed to have been dishonored for “insufficient funds.”⁶

[Select appropriate presumption(s):

Under our law when the drawer of a check has insufficient funds with the drawee to cover the check at the time of utterance, the subscribing drawer [or representative drawer, as the case may be,] is presumed to know of such insufficiency. This means that if the People have proven beyond a reasonable doubt that the defendant uttered a check as a drawer [or representative drawer, as the case may be], and he/she [or his/her principal]—did not have sufficient funds with the drawee to cover the check, you may, but you are not required to, infer from such fact that the defendant knew that he/she or his/her principal did not

³ See Penal Law § 190.00 (2)

⁴ See Penal Law § 190.00 (3)

⁵ See Penal Law § 190.00 (6)

⁶ See Penal Law § 190.00 (7)

have sufficient funds with the drawee to cover the check. Whether or not to draw that inference is for you to decide and will depend entirely on your evaluation of the evidence.⁷

Under our law a subscribing drawer [or representative drawer, as the case may be,] of an ultimately dishonored check is presumed to have intended or believed that the check would be dishonored upon presentation when the drawer had no account with the drawee at the time of utterance. This means that if the People have proven beyond a reasonable doubt that the defendant uttered a check that was dishonored by the drawee and the drawer had no account with the drawee at the time of utterance you may, but you are not required to, infer from such fact that the defendant intended or believed that the check would be dishonored upon presentation. Whether or not to draw that inference is for you to decide and will depend entirely on your evaluation of the evidence.⁸

Under our law a subscribing drawer [or representative drawer, as the case may be,] of an ultimately dishonored check is presumed to have intended or believed that the check would be dishonored upon presentation when the drawer had insufficient funds with the drawee at the time of utterance, and the check was presented to the drawee for payment not more than thirty days after the date of utterance, and the drawer had insufficient funds with the drawee at the time of presentation. This means that if the People have proven beyond a reasonable doubt that the defendant uttered a

⁷ See Penal Law § 190.10 (1). In 2019, the last sentence was added to conform to the instruction for presumptions in other sections. ”

⁸ See Penal Law § 190.10 (2). In 2019, the last sentence was added to conform to the instruction for presumptions in other sections.

check that was dishonored by the drawee and the drawer had insufficient funds with the drawee at the time of utterance, and the check was presented to the drawee for payment not more than thirty days after the date of utterance, and the drawer had insufficient funds with the drawee at the time of presentation you may, but you are not required to, infer from such fact that the defendant intended or believed that the check would be dishonored upon presentation. Whether or not to draw that inference is for you to decide and will depend entirely on your evaluation of the evidence.⁹

Under our law, proof of a notice of protest of the check, or a certificate under oath of an authorized representative of the drawee declaring dishonor of the check and insufficiency of funds constitutes presumptive evidence of dishonor of a check by the drawee and insufficiency of drawer's funds at the time of presentation. This means that you may, but you are not required to, infer from such evidence that the check was dishonored by the drawee for insufficiency of the drawer's funds at the time of presentation. Whether or not to draw that inference is for you to decide and will depend entirely on your evaluation of the evidence.¹⁰]

In order for you to find the defendant guilty of this crime, the People are required to prove, from all the evidence in the case, beyond a reasonable doubt, each of the following four elements:

1. That on or about (date), in the county of (county), the defendant (defendant's name), uttered a check as a drawer [or

⁹ See Penal Law § 190.10 (2). In 2019, the last sentence was added to conform to the instruction for presumptions in other sections.

¹⁰ See Penal Law § 190.10 (3). In 2019, the last sentence was added to conform to the instruction for presumptions in other sections.

representative drawer, as the case may be];

2. That the defendant did so knowing that he/she [or (specify principal)] did not then have sufficient funds with (specify drawee) to cover the check;

3. That the defendant intended or believed at the time of utterance that payment would be refused by (specify drawee) upon presentation; and

4. **That** payment was refused by (specify drawee) upon presentation.

[Note: If an affirmative defense does not apply, then conclude with the following two paragraphs. If the affirmative defense does apply, then omit the following two paragraphs, and insert here the affirmative defense charge in the Additional Charges section to this article.]

If you find the People have proven beyond a reasonable doubt each of those elements, you must find the defendant guilty of this crime.

If you find the People have not proven beyond a reasonable doubt any one or more of those elements, you must find the defendant not guilty of this crime.