

ISSUING A BAD CHECK
(B Misdemeanor)
(Drawer or Representative Drawer)
PENAL LAW 190.05 (1)
(Committed on or after Sept. 1, 1967)

The _____ 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.

Some of the terms used in this definition have their own special meaning in our law. I will now give you the meaning of the following terms: “check,” “utter,” “drawer,” [“representative drawer,”] “funds,” and “insufficient funds.”

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 of a person purportedly authorized to draw the check in his 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.⁷ This means that if the People have proven beyond a reasonable doubt that the defendant uttered a check as a drawer or representative drawer and he/she or his/her principal did not have sufficient funds with the drawee

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)

⁷ See Penal Law § 190.10 (1)

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 have sufficient funds with the drawee to cover the check.

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.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 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

⁸ See Penal Law § 190.10 (2)

that the check would be dishonored upon presentation.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.^{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 representative drawer];

2. That the defendant did so knowing that he/she [or (specify principal)] did not 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. 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

⁹ See Penal Law § 190.10 (2)

¹⁰ See Penal Law § 190.10 (3)

defense does apply, then omit the following two paragraphs, and insert here the affirmative defense charge in the Additional Charges section to this article.]

Therefore, if you find that the People have proven beyond a reasonable doubt each of those elements, you must find the defendant guilty of the crime of Issuing a Bad Check as charged in the _____ count.

On the other hand, if you find that the People have not proven beyond a reasonable doubt any one or more of those elements, you must find the defendant not guilty of the crime of Issuing a Bad Check as charged in the _____ count.