

**ISSUING A BAD CHECK**  
**(Passer)**  
**Penal Law § 190.05 (2)**  
**(Committed on or after Sept. 1, 1967)**  
**(Revised June 2020)<sup>1</sup>**

The (specify) count is Issuing a Bad Check.

Under our law, a person is guilty of Issuing a Bad Check when that person passes a check knowing that the drawer thereof does not then have sufficient funds with the drawee to cover it, and

he or she intends or believes at the time the check is passed that payment would 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.<sup>2</sup>

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.<sup>3</sup>

A person PASSES a check when, being a payee, holder or bearer of a check which previously has been or purports to have

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<sup>1</sup> See footnote 4.

<sup>2</sup> See Penal Law § 190.00 (1)

<sup>3</sup> See Penal Law § 190.00 (4)

been drawn and uttered by another, he delivers it, for a purpose other than collection, to a third person who thereby acquires a right with respect thereto.<sup>4</sup>

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.<sup>5</sup>

FUNDS means money or credit.<sup>6</sup>

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.”<sup>7</sup>

[Note: Add if appropriate:]

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 the dishonor of the check and insufficiency of funds constitutes presumptive evidence of dishonor of a check by the drawee and insufficiency of the 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

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<sup>4</sup> See Penal Law § 190.00 (5). In June 2020, added material beginning with “he delivers it.” that had been inadvertently omitted.

<sup>5</sup> See Penal Law § 190.00 (2)

<sup>6</sup> See Penal Law § 190.00 (6)

<sup>7</sup> See Penal Law § 190.00 (7)

at the time of presentation.<sup>8]</sup>

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), passed a check;

2. That the defendant did so knowing that (specify drawer) did not then have sufficient funds with (specify drawee) to cover the check;

3. That the defendant intended or believed at the time the check was passed 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.

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<sup>8</sup> See Penal Law § 190.10 (3).