

1 **14-1670. Fraud by worthless check; essential elements.**

2 For you to find the defendant guilty of fraud by worthless check [as charged in Count
3 _____]¹, the state must prove to your satisfaction beyond a reasonable doubt each of the
4 following elements of the crime:

5 1. The defendant gave a check² for \$ _____³ to _____ (*identify*
6 *person or company*);

7 2. _____ (*identify person or company*) gave [money]⁴
8 [_____,⁵ which had some value] for the check;

9 3. When the defendant gave the check, [~~he~~defendant] knew that there would be neither
10 sufficient funds nor credit⁶ for payment of the check in full;

11 4. The defendant intended to cheat or deceive _____ (*identify person*
12 *or company*) or another by use of the check;

13 5. This happened in New Mexico on or about the _____ day of
14 _____, _____.

15 USE NOTES

16 1. Insert the count number if more than one count is charged.

17 2. UJI 14-1674 NMRA, the definition of a check, should be given immediately
18 following this instruction if the instrument is not a check within the commonly understood
19 meaning of that term.

20 3. Insert face amount of check.

21 4. Use applicable alternative or alternatives.

22 5. Insert description of thing of value.

1 6. UJI 14-1675 NMRA, the definition of credit, may be given immediately following
2 this instruction if requested.

3 [As amended by Supreme Court Order No. S-1-RCR-2025-00126, effective for all cases pending
4 or filed on or after December 31, 2025.]

5 **Committee commentary.** — The Worthless Check Act is made up of NMSA 1978, [Sections] §§
6 30-36-1 to [30-36]-9[-NMSA 1978]. The act defines the crime of issuance of a worthless check,
7 divided into petty offenses and felonies. If the amount of the check is \$25.00 or more, the offense
8 is a felony. This instruction is appropriate for a felony or petty misdemeanor charge. Although
9 NMSA 1978, Section 30-36-5[-NMSA 1978] authorizes the aggregation, or totaling, of two or
10 more checks to establish a felony, the totaling portion of the penalty statute has been found to be
11 so vague as to deny due process. *State v. Conners*, 1969-NMCA-096, 80 N.M. 662, 459 P.2d 461[
12 ~~(Ct. App. 1969)~~], and *State v. Ferris*, 1969-NMCA-093, 80 N.M. 663, 459 P.2d 462[~~(Ct. App.~~
13 ~~1969)~~].

14 In the introductory paragraph, the offense is referred to as fraud by worthless check, instead of
15 issuance of a worthless check. The use of the word [“]“fraud[”]” better describes the offense,
16 because the gist of the offense is obtaining money or property by the use of false pretenses. The
17 giving of a check is a representation of the existing fact that the drawer has credit with the drawee
18 bank for the amount involved. *State v. Tanner*, 1917-NMSC-017, 22 N.M. 493, 164 P. 821[
19 ~~(1917)~~].

20 The statute makes it unlawful for a person to [“]“issue[”]” a worthless check. Issue means the
21 [“]“first delivery of an instrument to a holder or a remitter.[”]” NMSA 1978, [Section] § 55-3-
22 102(1)(a)[-NMSA 1978]. New Mexico courts have approved the application of definitions
23 contained in the Uniform Commercial Code [~~Chapter 55-~~]NMSA 1978, Chapter 55] where

1 appropriate for criminal offenses. *State v. Weber*, 1966-NMSC-164, 76 N.M. 636, 417 P.2d 444[
2 (~~1966~~)]; *State v. Tooke*, 1970-NMCA-068, 81 N.M. 618, 471 P.2d 188[~~(Ct. App. 1970)~~]. If the
3 court finds a particular transfer of a check to be an issuance within the meaning of Section 55-3-
4 102(1)(a)[~~NMSA 1978~~], then the jury may properly be instructed that they must find the defendant
5 [“]“gave[”] the check.

6 In most cases, the worthless instrument will be a check. [“]“Check[”] is a term commonly
7 understood and, therefore, identification of the instrument simply as a check will not confuse the
8 jury. In cases where the instrument is one other than that readily recognizable as a check and
9 commonly referred to as such, then the definition of [“]“check[”] must be given.

10 The statute is in the language, [“]“knowing [–]that the offender has insufficient funds in or credit
11 with the bank[–]. [”]” However, Paragraph 3 of this instruction requires that the defendant know
12 there are neither sufficient funds nor sufficient credit. The state must show both. Lack of credit is
13 an essential element of the crime. *See State v. Thompson*, 1933-NMSC-021, 37 N.M. 229, 20 P.2d
14 1030[~~(1933)~~].

15 Something of value must have been received by the defendant in exchange for the check. One who
16 gives a worthless check in payment of an account lacks the intent to defraud which is an essential
17 element of the offense. Thus, the offense is not committed by the giving of a worthless check to
18 pay a debt if no property changes hands on the strength of the check. *See State v. Davis*, 1921-
19 NMSC-003, 26 N.M. 523, 194 P. 882[~~(1921)~~], decided under a prior statute.

20 It is not essential that the defendant intend that the one who accepts the check be the one who
21 ultimately suffers the loss. *See* 35 C.J.S.[⁵] *False Pretenses*[⁵] § 21; *cf.*, *State v. Smith*, 1927-
22 NMSC-012, 32 N.M. 191, 252 P. 1003[~~(1927)~~]. For that reason, Paragraph 4 requires that the
23 defendant intended to cheat or deceive someone.

1 Fraud by worthless check is a specific intent crime. Intent to defraud may be established prima
2 facie by proof of dishonor and notice of dishonor. NMSA 1978, [Section]§ 30-36-7[~~NMSA-1978~~].
3 The statute sets out a rule of evidence and does not require notice as an essential element of the
4 offense. *State v. McKay*, 1969-NMCA-009, 79 N.M. 797, 450 P.2d 435[~~(Ct. App. 1969)~~]. *See also*
5 *Marchbanks v. Young*, 1943-NMSC-024, 47 N.M. 213, 139 P.2d 594[~~(1943)~~].
6 As in the crime of fraud, UJI 14-1640 NMRA, [“]“cheat[“]” does not mean to permanently deprive
7 a person of [~~his~~]their money or property.
8 [As amended by Supreme Court Order No. S-1-RCR-2025-00126.]