

1 **14-1673. Defense of notice to payee that check is worthless.**<sup>1</sup>

2 An issue you must consider [in Count \_\_\_\_\_]<sup>2</sup> is whether \_\_\_\_\_<sup>3</sup>  
3 was on notice that the check was an insufficient funds check when \_\_\_\_\_<sup>3</sup>  
4 accepted the check. If \_\_\_\_\_<sup>3</sup> was on notice that the check was an insufficient  
5 funds check, then you must find the defendant not guilty [of Count \_\_\_\_\_]<sup>2</sup>.

6 A person who accepts a check is on notice that it is an insufficient funds check if:  
7 [The check is postdated; that is, dated later than the day that the check is delivered]<sup>4</sup>  
8 [or]

9 [The person who accepts the check (knows)<sup>5</sup> (has been told) (has reason to believe) that at  
10 the time the check was delivered and accepted, the person who signed the check did not have on  
11 deposit (or to [~~his~~their credit)<sup>6</sup> sufficient funds to insure payment of the check when it reached  
12 the bank].

13 The burden is on the state to prove beyond a reasonable doubt that \_\_\_\_\_<sup>3</sup>  
14 was not on notice that the check was an insufficient funds check.

15 USE NOTES

16 1. For use when there is an issue as to an exception under the Worthless Check Act  
17 [~~30-36-1 NMSA 1978~~][NMSA 1978, Section 30-36-1].

18 2. Insert the count number if more than one count is charged.

19 3. Identify the person or persons, in the alternative, to whom notice would constitute  
20 a defense.

21 4. Use applicable bracketed paragraph or paragraphs.

22 5. If this bracketed paragraph is used, use in the alternative the applicable  
23 parenthetical phrase or phrases.

1           6.       Use parenthetical clause if credit is in issue.

2       [As amended by Supreme Court Order No. 18-8300-012, effective for all cases pending or filed  
3       on or after December 31, 2018; as amended by Supreme Court Order No. S-1-RCR-2025-00126,  
4       effective for all cases pending or filed on or after December 31, 2025.]

5       **Committee commentary.** — NMSA 1978, Section 30-36-6[~~NMSA 1978~~] states that certain  
6       checks are excepted from the Worthless Check Act. These exceptions are covered in this  
7       instruction, which sets out an absolute defense under the act. *See State v. Downing*, 1971-NMCA-  
8       122, 83 N.M. 62, 488 P.2d 112[~~(Ct. App. 1971)~~].

9       Subsection A of the statute refers to actual knowledge and express notice [“]“prior to the drawing  
10      of the check.[”]” This instruction refers to the time that the check was delivered and accepted,  
11      using the definition of [“]“draw[”]” that is most favorable to the defendant. NMSA 1978, [~~Section~~  
12      ~~30-36-2C NMSA 1978~~]§ 30-36-2(C).

13      Although the statute refers to the knowledge of the payee or holder, the instruction is worded more  
14      broadly. If an agent of the payee receives the notice, the defense is applicable.

15      [As amended by Supreme Court Order No. S-1-RCR-2025-00126.]