

17.4 WORTHLESS CHECK — OBTAINING PROPERTY

§ 832.05(4), Fla. Stat.

This statute applies to a variety of orders to pay money and "commercial paper," and to a variety of types of drawees and transactions. The charge has been framed to cover the most common transaction encountered in criminal litigation. It can be readily modified to fit other transactions covered by the statute.

To prove the crime of (crime charged), the State must prove the following seven elements beyond a reasonable doubt:

1. (Defendant)

[drew]
[made]
[uttered]
[issued]
[delivered]

the check admitted in evidence as State Exhibit ____.
2. (Defendant) did so to obtain

[services].
[goods].
[wares].
[(other thing of value alleged)].
3. The [services] [goods] [wares] [(other thing of value alleged)] had some monetary value.
4. When (defendant) did so, there was not sufficient money on deposit in the bank to pay the check.
5. (Defendant) knew when the check was written there was not sufficient money on deposit with the bank.
6. (Defendant) knew there was no arrangement or understanding with the bank for the payment of the check when it was presented.
7. The check was in the amount of \$150 or more.

Defenses. Give if applicable.

Even if you find all these elements are proved, you should go on to consider the defense. You must find the defendant not guilty if you find either of the following two defenses to have been

proved:

- 1.** (Name of payee) **knew that** (defendant's) **funds and credit at the bank at the time the check was given were insufficient to pay the check; or**
- 2.** (Name of payee) **had good reason to believe that** (defendant's) **funds and credit at the bank at the time the check was given were insufficient to pay the check.**

Give if applicable.

When an employee of a business receives a check, the business must be regarded as knowing whatever the employee knows about the check.

Give if applicable.

The fact that (defendant) **had previously issued a worthless check to the payee did not, by itself, give** (payee) **reason to believe that** (defendant) **had insufficient funds to ensure payment of this check.**

Lesser Included Offenses

OBTAINING PROPERTY BY WORTHLESS CHECKS — 832.05(4)

CATEGORY ONE	CATEGORY TWO	FLA. STAT.	INS. NO.
Worthless check		832.05(2)	17.3
	Attempt	777.04(1)	5.1

Comment

This instruction was adopted in 1981 and amended in 1987.