

**FALSIFYING BUSINESS RECORDS  
IN THE SECOND DEGREE  
Penal Law § 175.05  
(Committed on or after November 1, 1986)**

The (*specify*) count is Falsifying Business Records in the Second Degree.

Under our law, a person is guilty of falsifying business records in the second degree when, with intent to defraud, he or she:

*Select appropriate alternative:*

makes or causes a false entry in the business records of an enterprise; *or*

alters, erases, obliterates, deletes, removes or destroys a true entry in the business records of an enterprise; *or*

omits to make a true entry in the business records of an enterprise in violation of a duty to do so which he or she knows to be imposed upon him or her by law or by the nature of his or her position; *or*

prevents the making of a true entry or causes the omission thereof in the business records of an enterprise.

The following terms used in that definition have a special meaning:

ENTERPRISE means any entity of one or more persons, corporate or otherwise, public or private, engaged in business, commercial, professional, industrial, eleemosynary, social, political or governmental activity.<sup>1</sup>

BUSINESS RECORD means any writing or article,

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<sup>1</sup> Penal Law § 175.00(1).

including computer data or a computer program, kept or maintained by an enterprise for the purpose of evidencing or reflecting its condition or activity.<sup>2</sup>

INTENT means conscious objective or purpose. Thus a person acts with intent to defraud when his or her conscious objective or purpose is to do so.<sup>3</sup>

In order for you to find the defendant guilty of this crime, the People are required to prove, from all of the evidence in the case, beyond a reasonable doubt, each of the following two elements:

1. That on or about (date), in the county of (county), the defendant, (defendant's name),

*Select appropriate alternative:*

made or caused a false entry in the business records of an enterprise; *or*

altered, erased, obliterated, deleted, removed or destroyed a true entry in the business records of an enterprise; *or*

omitted to make a true entry in the business records of an enterprise in violation of a duty to do so which the defendant knew to be imposed upon him/her by law or by the nature of his/her position; *or*

prevented the making of a true entry or caused the omission thereof in the business records of an enterprise; and,

2. That the defendant did so with intent to defraud.

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<sup>2</sup> Penal Law § 175.00(2).

<sup>3</sup> Penal Law § 15.05(1).

*[Note: If the affirmative defense does not apply, conclude as follows:*

If you find the People have proven beyond a reasonable doubt both of those elements, you must find the defendant guilty of this crime.

If you find the People have not proven beyond a reasonable doubt either one or both of those elements, you must find the defendant not guilty of this crime.

*[NOTE: If the affirmative defense does apply, continue as follows:*

If you find that the People have not proven beyond a reasonable doubt either one or both of those elements, you must find the defendant not guilty of Falsifying Business Records in the Second Degree.

If you find that the People have proven beyond a reasonable doubt both of the elements, you must consider an affirmative defense the defendant has raised. Remember, if you have already found the defendant not guilty of Falsifying Business Records in the Second Degree, you will not consider the affirmative defense.

Under our law, it is an affirmative defense to this charge of Falsifying Business Records in the Second Degree that the defendant, at the time he/she engaged in the conduct constituting the offense, was a clerk, bookkeeper or other employee who, without personal benefit, merely executed the orders of his/her employer or of a superior officer or employee generally authorized to direct his/her activities.

Under our law, the defendant has the burden of proving an affirmative defense by a preponderance of the evidence.

In determining whether the defendant has proven the affirmative defense by a preponderance of the evidence, you may consider evidence introduced by the People or by the defendant.

A preponderance of the evidence means the greater part of the believable and reliable evidence, not in terms of the number of witnesses or the length of time taken to present the evidence, but in terms of its quality and the weight and convincing effect it has. For the affirmative defense to be proved by a preponderance of the evidence, the evidence that supports the affirmative defense must be of such convincing quality as to outweigh any evidence to the contrary.

If you find that the defendant has not proven the affirmative defense by a preponderance of the evidence, then, based upon your initial determination that the People had proven beyond a reasonable the elements of Falsifying Business Records in the Second Degree, you must find the defendant guilty of that crime.

If you find that the defendant has proven the affirmative defense by a preponderance of the evidence, then you must find the defendant not guilty of Falsifying Business Records in the Second Degree.