

## **FALSE STATEMENT TO PROCURE A CREDIT CARD**

G.L. c. 266, § 37B(a)

**The defendant is charged with (making a false statement) (causing a false statement to be made) to obtain a credit card. To prove the defendant guilty of this offense, the Commonwealth must prove six things beyond a reasonable doubt:**

***First*, that the defendant made (caused to be made) a written statement;**

***Second*, that the statement was related to a material fact about the identity or financial condition of (the defendant) (another person);**

***Third*, that the statement was false;**

***Fourth*, that the defendant knew the statement was false when made;**

***Fifth*, that the defendant intended that the false statement be relied upon for the purpose of obtaining of a credit card; and,**

***Sixth*, that the defendant made the false statement with the intent to defraud.**

**To prove the first element, the Commonwealth must prove beyond a reasonable doubt that the defendant made a written**

**statement or that the defendant caused a written statement to be made by some other means. A statement may be written physically as when one uses a pen or pencil or electronic device.**

**To prove the second element, the Commonwealth must prove beyond a reasonable doubt that the statement contained material information about the identity or financial condition of the defendant or some other person. Something is material when it is important to accomplishing the goal for which it was created or used.**

**To prove the third element, the Commonwealth must prove beyond a reasonable doubt that the statement was false when it was made. Something is false when it is not true or genuine.**

**To prove the fourth element, the Commonwealth must prove beyond a reasonable doubt that the defendant knew the statement was false when it was made. This requires you to make a decision about the defendant's state of mind at that time. It is not enough to prove that a prudent person would have known or believed that the statement was false. The Commonwealth must prove the defendant actually knew, or at least believed, that it was. You may examine any**

**evidence regarding the defendant's actions or words, all of the surrounding circumstances, and any reasonable inferences you draw from that evidence to help you determine whether the defendant knew the statement was false when it was made.**

**To prove the fifth element, the Commonwealth must prove beyond a reasonable doubt that the defendant intended that the false representation be relied upon by another person or entity to obtain a credit card. A credit card is a device that enables the cardholder to obtain money, services, or things on credit without immediate payment or by debit from a cash account.<sup>1</sup>**

**To prove the sixth element, the Commonwealth must prove beyond a reasonable doubt that the defendant made the statement with the intent to defraud. To act with an intent to defraud means to act knowingly with the aim of deceiving or cheating another. The purpose is often to bring about gain or benefit either for oneself or for**

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<sup>1</sup> Section 1 of G.L. c. 266, § 37, provides a more expansive definition of a credit card than the one provided in this instruction: A credit card is "an instrument or device, whether known as a credit card, credit plate or other name, or the code of number used to identify that instrument or device or an account of credit or cash accessed by that instrument or device, issued with or without a fee by an issuer for the use of the cardholder in obtaining money, goods, services or anything else of value on credit or by debit from a cash account."

**another person or entity.<sup>2</sup> You may examine the evidence in the case, all of the surrounding circumstances, and any reasonable inferences you draw from that evidence, to help you determine whether the defendant had an intent to defraud.**

*See Commonwealth v. O'Connell*, 438 Mass. 658, 664 (2003) (Commonwealth need not show intent to defraud particular person, but sufficient that defendant "intended to injure or defraud someone"; proof of intent to defraud may be inferred from the circumstances); *Commonwealth v. Segee*, 218 Mass. 501, 504 (1914) ("The false making or alteration with intent to defraud is the gist of the offense.")

**If the Commonwealth has proven all six elements beyond a reasonable doubt, you should return a verdict of guilty. If the Commonwealth has failed to prove one or more of these elements beyond a reasonable doubt, you must find the defendant not guilty.**

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<sup>2</sup> See *United States v. Phath*, 144 F.3d 146, 149 (1st Cir. 1998); *United States v. Leahy*, 445 F.3d 634, 644 (3d Cir. 2006).