CHAPTER 11

Bank Deposits

**SECTION 34‑11‑10.** Payment of deposits made in name of two or more persons.

 Subject to the provisions of Sections 62‑6‑101, et seq., of the South Carolina Probate Code:

 (a) when a deposit has been made in a bank, banking institution, or depository transacting business in this State in the names of two or more persons, payable to any of the depositors or payable to any of the depositors or the survivor or survivors, the deposit or any part thereof may be paid to any of the persons, whether the other or others are living or not and the receipt or acquittance of the person or persons paid is a valid and sufficient release and discharge for any or all payments made.

 (b) The pledge or hypothecation to any bank, banking institution, or other depository transacting business in this State of all or part of a deposit account in the names of two or more persons, payable to any of the depositors or payable to any of the depositors or the survivor or survivors, by any depositor or depositors, whether minor or adult, upon whose signature or signatures withdrawals may be made from the account is, unless the terms of the deposit account provide specifically to the contrary, a valid pledge and transfer to the institution of that portion of the account pledged or hypothecated.

 For purposes of this section the term “deposit” includes a certificate of deposit.

HISTORY: 1962 Code Section 8‑171; 1952 Code Section 8‑171; 1942 Code Section 7851; 1935 (39) 236; 1944 (43) 1272; 1985 Act No. 128, Section 5; repealed by 1986 Act No. 539, Section 2, eff July 1, 1987; 1990 Act No. 521, Part II, Section 99, eff June 5, 1990.

Effect of Amendment

The 1990 amendment added “Subject to the provisions of Sections 62‑6‑101 et seq. of the South Carolina Probate Code,” at the beginning of the section.

CROSS REFERENCES

Deposit of state funds, see Sections 11‑13‑10 et seq.

Interest on deposits of public funds, see Section 11‑1‑20.

Provisions of the South Carolina Probate Code relative to multiple‑party accounts, including joint accounts, P.O.D. accounts, and trust accounts, see Sections 62‑6‑101 et seq.

LIBRARY REFERENCES

9 C.J.S., Banks and Banking Section 334.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Cotenancies Section 18, Requirements.

S.C. Jur. Gifts Section 7, Intent.

Treatises and Practice Aids

Bogert ‑ the Law of Trusts and Trustees Section 47, Creation of a Trust of a Savings Account‑Joint Accounts.

LAW REVIEW AND JOURNAL COMMENTARIES

Annual Survey of South Carolina Law: Property: Joint Bank Accounts— Inter Vivos Ownership. 33 S.C. L. Rev. 125 (August 1981).

NOTES OF DECISIONS

In general 1

Under former law 2

1. In general

In determining whether a presumption that all funds from a joint bank account become payable to the survivor, under Section 34‑11‑10, has been rebutted, a court will analyze all relevant factors, including, but not limited to: whether the accounts were used solely for the depositor’s benefit; who made the deposits and withdrawals; whether the survivor of a joint account was meant to be favored by the deceased party; and whether a gift to the survivor would be destructive of the depositor’s general testamentary plan. Carolina Production Credit Ass’n v. Rogers (S.C. 1984) 282 S.C. 184, 318 S.E.2d 357. Joint Tenancy 6

A husband who had deposited money into an account jointly held by him and his wife was presumed to have made a gift to the wife only as to one‑half of the amount while both parties were alive. Clinkscales v. Clinkscales (S.C. 1980) 275 S.C. 308, 270 S.E.2d 715.

Although a presumption arises that funds in joint accounts established in conformity with statute are intended as a gift to be paid to the survivor as owner, this presumption may be rebutted by evidence that negates the donative intention of the deceased. Johnson v. Herrin (S.C. 1978) 272 S.C. 224, 250 S.E.2d 334. Gifts 47(1)

2. Under former law

This section [Code 1962 Section 8‑171] creates a presumption that the parties intended a joint‑survivor account to be paid to the survivor as owner; and that presumption will stand and entitles the survivor to full right of ownership unless rebutted by evidence to the satisfaction of the trier of the facts. Gilford v. South Carolina Nat. Bank (S.C. 1972) 257 S.C. 374, 186 S.E.2d 258.

There is a presumption that an account card signed by two persons creates the contractual relationship of a joint‑survivor account between these parties and the bank. Gilford v. South Carolina Nat. Bank (S.C. 1972) 257 S.C. 374, 186 S.E.2d 258.

**SECTION 34‑11‑20.** Acceptance and disbursement of deposits of minors.

 A bank may accept deposits of and pay out deposits upon a check or other order of a minor and act in any other matter with respect to the deposits of a minor with the same effect as if dealing with a person of full legal capacity.

HISTORY: 1962 Code Section 8‑171.1; 1952 (51) 1765; 1985 Act No. 128, Section 6.

CROSS REFERENCES

Legal capacity of minors, see Sections 63‑5‑310 et seq.

RESEARCH REFERENCES

Treatises and Practice Aids

Williston on Contracts Section 9:8, Transactions that Cannot be Avoided by Infant‑Statutory Changes in Common‑Law Liability of Infants.

**SECTION 34‑11‑30.** Receipt of deposits or trusts after knowledge of insolvency.

 It shall be a misdemeanor for any president, director, manager or cashier or other officer of any banking institution to receive any deposit or trust or create any debts of such corporation after he shall become aware that such corporation is insolvent. Every officer of such failing corporation shall become personally liable to the amount of any such deposit or trust received by him or with his knowledge or assent in any such case to the person thereby damaged, whether criminal prosecution be made or not. And all persons convicted for misdemeanor, as provided in this section, shall be punished by imprisonment for a term of not less than one year and by a fine of not less than one thousand dollars.

HISTORY: 1962 Code Section 8‑172; 1952 Code Section 8‑172; 1942 Code Section 7850; 1932 Code Sections 1351, 7831; Civ. C. ‘22 Section 3973; Civ. C. ‘12 Section 2638; Civ. C. ‘02 Section 1762; G. S. 1348; R. S. 223, 1460; Cr. C. ‘22 Section 241; Cr. C. ‘12 Section 346; Cr. C. ‘02 Section 259; 1877 (16) 232; 1923 (33) 156; 1960 (51) 1602.

CROSS REFERENCES

Section not applying to national banks, see Section 34‑3‑20.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Banks and Banking Section 97, Receiving Deposits When Bank is Insolvent.

S.C. Jur. Banks and Banking Section 147, Nature and Extent.

Treatises and Practice Aids

Bogert ‑ the Law of Trusts and Trustees Section 47, Creation of a Trust of a Savings Account‑Joint Accounts.

Attorney General’s Opinions

Inability to pay a “cash letter” of the Federal Reserve Bank constitutes insolvency by the payor bank. 1978 Op Atty Gen, No 78‑186, p 212.

NOTES OF DECISIONS

In general 1

1. In general

Actual knowledge prerequisite to liability. The bank directors are not chargeable, under this section [Code 1962 Section 8‑172], for the amount of deposits received while the bank was in an insolvent condition by reason of the fact that they should have known of such condition by the exercise of due care and diligence, in that the statute creates the liability only after the director shall have become aware that the bank is insolvent, which, in accordance with the ordinary meaning of the term “aware” requires actual knowledge as prerequisite to liability. Daniels v. Berry (S.C. 1929) 148 S.C. 446, 146 S.E. 420.

This is a penal statute, and must be strictly construed. State v. Lewis (S.C. 1927) 141 S.C. 207, 139 S.E. 386.

Civil and criminal liability under this section [Code 1962 Section 8‑172]. ‑ This section [Code 1962 Section 8‑172] imposes criminal liability for the receipt of deposits by a bank officer, and also civil liability upon bank officers for actually receiving deposits, or for the reception thereof with their knowledge or assent. State v. Lewis (S.C. 1927) 141 S.C. 207, 139 S.E. 386.

From the language of this section [Code 1962 Section 8‑172] the word “received” is used in its common acceptation, meaning actual, as distinguished from constructive, receipt, and the plain meaning of its language can only be that any officer who actually receives a deposit shall be both criminally and civilly liable; but if he merely assents to, or has knowledge of, the actual receipt by some other person, he shall be only civilly liable therefor. If the word “received” includes a constructive receipt, such as merely having knowledge of or assenting to the manual receipt by another, then in creation of the civil liability the use of the words “or with his knowledge or assent” could mean nothing. State v. Lewis (S.C. 1927) 141 S.C. 207, 139 S.E. 386.

**SECTION 34‑11‑40.** Duplicate for lost or destroyed time certificate of deposit.

 When the holder of a time certificate of deposit for money or other things of value deposited in a corporation organized under any special act or the general laws of the State or deposited with any person engaged in borrowing or lending money or for its safekeeping with or without the payment of interest thereon desires a new certificate of deposit in the place of the original certificate lost or destroyed, the holder shall make application to the person for the issuance of a new certificate. The holder of the certificate shall also make affidavit that the certificate has been lost or destroyed, that it has not been assigned or pledged and that the holder has the bona fide title and ownership of it. When the depository in its judgment considers it necessary, it may require the holder to execute to it a good and sufficient bond to be approved by the depository issuing the certificate in the amount of the market value of the lost or destroyed certificate to indemnify the depository against any loss or damage that may arise on account of the original certificate within three years from the date of execution of the bond. Thereupon the depository shall issue a new certificate of deposit in lieu of the one lost or destroyed and after the lapse of three years from the date of the issuance of the new certificate the original is null and void and no action‑at‑law or suit in equity may thereafter be brought thereon.

HISTORY: 1962 Code Section 8‑174; 1952 Code Section 8‑174; 1942 Code Section 7848; 1932 Code Section 7832; 1924 (33) 1087; 1978 Act No. 574 Section 1; 1985 Act No. 128, Section 7.

CROSS REFERENCES

Provisions relative to losses of certificates of deposit other than those referred to in this section, see Section 34‑11‑50.

**SECTION 34‑11‑50.** Duplicate for any other lost or destroyed certificate of deposit or savings account book.

 In case of loss of any certificate of deposit, other than those referred to in Section 34‑11‑40, or account book evidencing a savings account with a bank, the party to whom the certificate or account book was originally issued, or his personal representative, may apply to the bank for the issuance of a duplicate certificate or account book. Thereupon, the bank, upon receipt of the application, accompanied by an affidavit to the effect that the certificate or account book evidencing the savings account with the bank has been lost or destroyed, that the certificate or account book has not been pledged or assigned in whole or in part, and that the applicant is the bona fide title holder and owner of the lost certificate or account book, shall issue a duplicate certificate or account book to the person entitled thereto and the former certificate is null and void and no action‑at‑law or suit in equity may be brought thereon. The bank may, whenever in its judgment it considers it necessary, require of the applicant a good and sufficient bond to be approved by the bank in the amount of the market value of the lost or destroyed certificate or account book to indemnify the bank against any loss or damage that may arise on account of the original certificate or account book within three years from the date of the issuance of the duplicate certificate or account book. Nothing contained in this section affects the rights of the parties to any transfer or assignment of any certificate or account book as between themselves.

HISTORY: 1962 Code Section 8‑175; 1952 Code Section 8‑175; 1942 Code Section 7849; 1932 Code Section 7833; 1927 (35) 214; 1978 Act No. 574 Section 2; 1985 Act No. 128, Section 8.

**SECTION 34‑11‑60.** Drawing and uttering fraudulent check, draft or other written order.

 (a) It is unlawful for a person, with intent to defraud, in his own name or in any other capacity, to draw, make, utter, issue, or deliver to another a check, draft, or other written order on a bank or depository for the payment of money or its equivalent, whether given to pay rent, make a payment on a lease, obtain money, services, credit, or property of any kind or nature whatever, or anything of value which includes an obligation or debt of state taxes which is past due or presently due, when at the time of drawing, making, uttering, issuing, or delivering the check or draft or other written order the maker or drawer does not have an account in the bank or depository or does not have sufficient funds on deposit with the bank or depository to pay the same on presentation, or if the check, draft, or other written order has an incorrect or insufficient signature on it to be paid upon presentation.

 (b) In any prosecution or action under the provisions of this section, a check, draft, or other written order for which the information required in item (1) of this subsection is available at the time of issuance shall constitute prima facie evidence of the identity of the party issuing the check, draft, or other written order and that such person was a party authorized to draw upon the named account. The failure of the person receiving the check to obtain the information specified in items (1) or (2) of this subsection shall not warrant dismissal of a prosecution or other action brought pursuant to this section, but the party bringing the action shall in such circumstances have the burden of proving that the defendant signed or endorsed the check and presented it in payment of some debt or other obligation.

 (1) To establish this prima facie evidence, the full name, residence address, and home telephone number of the person presenting the check, draft, or other written order shall be obtained by the party receiving the instrument. This information may be provided by having the information recorded on the check or instrument itself, or the number of a check‑cashing identification card issued by the receiving party may be recorded on the check. The check‑cashing identification card shall be issued only after the full name, residence address, and home telephone number of the person presenting the check, draft, or other written order has been placed on file by the receiving party.

 (2) In addition to the information required in item (1) of this subsection, the party receiving a check shall witness the signature or endorsement of the party presenting the check and as evidence of such, the receiving party shall initial the check. Validation by a bank teller machine shall constitute compliance with this item.

 (c) It shall be the duty of the drawee of any check, draft, or other written order, before refusing to pay the same to the holder thereof upon presentation, to cause to be written, printed, or stamped in plain language thereon or attached thereto, the reason for drawee’s dishonor or refusal to pay same. In all prosecutions under this section, the introduction in evidence of any unpaid and dishonored check, draft or other written order, having the drawee’s refusal to pay stamped or written thereon, or attached thereto, with the reason therefor as aforesaid, shall be prima facie evidence of the making or uttering of such check, draft, or other written order, and the due presentation to the drawee for payment and the dishonor thereof, and that the same was properly dishonored for the reasons written, stamped or attached by the drawee on such dishonored check, draft, or other written order; and, as against the maker or drawer thereof, the withdrawing from deposit with the drawee named in the check, draft or other written order, the funds on deposit with such drawee necessary to insure payment of such check, draft or other written order upon presentation within ten days after negotiation; or the drawing, making, uttering or delivering of a check, draft or written order, payment of which is refused by the drawee, shall be prima facie evidence of knowledge of insufficient funds in or credit with such drawee; provided, however, if it is determined at the trial in a prosecution hereunder, that the payee of any such check, draft or written order at the time of accepting such check, draft or written order, had knowledge of or reason to believe that the drawer of such check, draft or other written order did not have sufficient funds on deposit in or credit with such drawee, then the payee instituting such criminal prosecution shall be assessed all costs of court incurred in connection with such prosecution.

 (d) The word “credit” as used in this section means securing further advances of money, goods, or services by means of a check, draft, or other written order, given in whole or in part payment of a then existing account. Payment for meals, lodging, or other goods or services at a hotel, motel, or other hostelry by means of a check, draft, or other written order before or upon departure or checkout from the hostelry is obtaining those goods or services by means of a check, draft, or other written order for the purposes of this section. This section applies to a check given in full or partial payment of any preexisting debt. This section does not apply to the giving of a check, draft, or other written order if the payee knows, has been expressly notified, or has reason to believe that the drawer did not have an account or have on deposit with the drawee sufficient funds to ensure payment of the check, nor to any check which has not been deposited to an account of the payee within a period of ten days from the date the check was presented to the payee. It is also unlawful for any person to induce, solicit, or to aid and abet any other person to draw, make, utter, issue, or deliver to any person including himself any check, draft, or other written order on any bank or depository for the payment of money or its equivalent, being informed, knowing, or having reasonable cause for believing at the time of the inducing, soliciting, or the aiding and abetting that the maker or the drawer of the check, draft, or other written order has not sufficient funds on deposit in, or an account with, the bank or depository with which to pay the same upon presentation.

 (e) No warrant for a violation of this section may be obtained more than one hundred eighty days after the date the check was uttered.

HISTORY: 1962 Code Section 8‑176; 1952 Code Section 8‑176; 1942 Code Section 1167; 1932 Code Section 1167; Cr. C. ‘22 Section 60; Cr. C. ‘12 Section 208; 1909 (26) 21; 1914 (28) 489; 1923 (33) 120; 1964 (53) 2400; 1970 (56) 2053; 1979 Act No. 56 Section 1; 1988 Act No. 517, eff May 9, 1988; 1988 Act No. 669, Section 1, eff July 1, 1987; 1991 Act No. 112, Sections 1, 2, eff May 31, 1991; 1996 Act No. 235, Sections 1, 2, eff March 4, 1996; 1999 Act No. 87, Section 2, eff June 11, 1999.

Effect of Amendment

The first 1988 amendment (by Act No. 517) in subsection (a) added the words “which includes an obligation or debt of state taxes which is past due or presently due” following the words “any thing of value”, and made grammatical changes.

The second 1988 amendment (by Act No. 669) in subsection (d) deleted “to any postdated check or” preceding “to any check given only in full or partial payment”, and made grammatical changes.

The 1991 amendment in subsection (a), added the words “pay rent, make a payment on a lease,” following the words “whether given to”; and added subsection (e), pertaining to warrants.

The 1996 amendment, by Section 1, revised subsection (b); by Section 2, revised subsection (d).

The 1999 amendment revised subsection (d) to rewrite provisions concerning checks given in payment of preexisting debts and made grammatical changes.

CROSS REFERENCES

Civil remedy for drawing fraudulent checks, etc., see Section 34‑11‑75.

Conditions for suspension of imposition or execution of sentence by magistrate after conviction for violation of this section, see Section 22‑3‑800.

Court’s duty to report convictions for violations of Section 34‑11‑60, see Section 34‑11‑95.

Reporting requirements related to certain warrants and arrests involving bad checks, see Section 34‑12‑30.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. False Pretenses Section 1, Scope Note.

Attorney General’s Opinions

While prima facie evidence of the identity of the individual presenting a check and his authority to draw on the account may be established in part by witnessing the signature of the individual, the failure to witness the signature would not necessarily warrant a fraudulent check case being dismissed. Instead, the State is put to the additional burden of providing evidence that the defendant in a particular case signed the check and presented it in payment of some debt. 1986 Op Atty Gen, No. 86‑36, p 114.

Any fraudulent check conviction in any court in this State pursuant to the provisions of sections 34‑11‑60 et seq. or a municipal ordinance adopted pursuant to such provisions would serve as a prior fraudulent check conviction. Therefore, a case involving the offense of issuing a fraudulent check should be considered a subsequent offense if the individual who issued the check has a prior record of conviction for such offense in any court in this State. 1988 Op Atty Gen, No. 88‑4, p 27.

Where an out of state seller is sent a worthless check from a South Carolina resident, jurisdiction for criminal prosecution would lie in South Carolina. 1983 Op Atty Gen, No. 83‑45, p. 66.

The Columbia City Magistrate, when a prosecution for a violation of Code 1962 Section 8‑176, as amended [Code 1976 Section 34‑11‑60], has been discontinued by settlement or compromise, may not charge and collect from the defendant any fee in addition to his salary. 1974‑75 Op Atty Gen, No 4169, p 229.

Acceptance of payment on check after warrant issued does not bar prosecution. Under the provisions of this section [Code 1962 Section 8‑176] as amended in 1970, acceptance of partial payment or full payment on the amount of a bad check after a warrant has been issued does not act as a bar to criminal prosecution. 1970‑71 Op Atty Gen, No. 3108, p 54.

Worthless check given partly to pay existing debt and partly to obtain new credit or goods is a bad check within this section [Code 1962 Section 8‑176]. 1964‑65 Op Atty Gen, No. 1865, p 130.

A check given in payment for a month in advance of cable services could be construed as a fraudulent check, assuming it meets all of the necessary criteria. 1994 Op Atty Gen, No. 94‑3, p. 19.

A Lexington County magistrate would have jurisdiction to issue a fraudulent check warrant when a check deposited in the mail is received at a cable company’s office in Lexington County and the cable services were received in Richland County. 1994 Op Atty Gen, No. 94‑3, p. 19.

A Lexington magistrate would have jurisdiction as to a check paid either in person or delivered through the mail at the cable company’s office in Lexington County. 1994 Op Atty Gen, No. 94‑3, p. 19.

It is questionable whether a Lexington County magistrate would have jurisdiction in circumstances where a cable company located in Lexington County attempts to draft funds from a cable customer’s account through an out‑of‑state company and the out‑of‑state company transmits the written order that is returned as non‑sufficient funds or account closed. 1994 Op Atty Gen, No. 94‑3, p. 19.

In light of the exemptions set forth in S.C. Code Ann. Section 34‑11‑60(d), further review is necessary to determine whether a fraudulent check warrant could be issued when a post‑dated check issued to a check cashing business is not honored by a bank when presented by the check cashing business. 1994 Op Atty Gen, No. 94‑31, p. 76.

NOTES OF DECISIONS

In general 1

Under former law 2

1. In general

The defendant was guilty of forgery as opposed to writing bad checks even though the check he cashed was a legitimate check, drawn on a legitimate account, signed by the individual authorized to issue checks on that account, since there was an abundance of circumstantial evidence showing that the account was opened with fraudulent intent where the account was in the name of a fictitious person, doing business as a fictitious, albeit licensed, business. State v. Wescott (S.C.App. 1994) 316 S.C. 473, 450 S.E.2d 598.

A magistrate’s abuse of his judicial office warranted a public reprimand where he issued arrest warrants pursuant to Section 34‑11‑60 for uttering fraudulent checks at the request of an individual engaged in an illegal loan operation, and the magistrate knew or should have known that as a result of the illegal operation, the checks were not in violation of Section 34‑11‑60. Matter of Ward (S.C. 1994) 323 S.C. 1, 448 S.E.2d 546.

2. Under former law

Cited in State v Sutton, 228 SC 314, 89 SE2d 874 (1955). White v Coleman, 277 F Supp 292 (1967, DC SC).

South Carolina Code Annotated Section 34‑11‑70 protects merchants who follow its procedures, but does not create cause of action in favor of maker of fraudulent check if merchant fails to follow its procedures; payment on fraudulent check within grace period provided by statute does not prevent prosecution for issuing fraudulent check; maker of fraudulent check did not establish claim of false arrest or false imprisonment where merchant who received bad check instituted criminal proceedings against maker within 15 days of giving notice required by SC Code Anno. Section 34‑11‑70; maker of fraudulent check did not establish claim of malicious prosecution against merchant who received bad check on grounds that merchant instituted criminal proceedings against maker within 15 days of notice required by SC Code Anno. Section 34‑11‑70, as maker of fraudulent check admitted that when she wrote checks she knew she did not have sufficient funds in violation of Section 34‑11‑60. James v. Fast Fare, Inc., 1988, 685 F.Supp. 565.

The offense, under this section [Code 1962 Section 8‑176], may be compromised. George v. Leonard, 1947, 71 F.Supp. 665.

A conviction for uttering a fraudulent check is one for a crime of moral turpitude and therefore may be used for impeachment. State v. Harrison (S.C. 1989) 298 S.C. 333, 380 S.E.2d 818. Witnesses 345(2)

In a prosecution for uttering a fraudulent check, the absence of a factual determination at the trial level of the purpose for which the check was issued, in order to determine whether the check could be excluded from the fraudulent check statute under the provision excluding checks given in payment of preexisting debts, required a new trial. State v. Rumsey (S.C. 1988) 297 S.C. 273, 376 S.E.2d 509.

Trial court properly granted new trial nisi additur in amount of $7,500 in action for malicious prosecution while jury had awarded injured party only $150 damages as attorney fee, where trial judge held that verdict was grossly inadequate because plaintiff was arrested while in presence of her 2 children and forced to travel to county jail where she was subjected to lengthy booking process, including being photographed and then imprisoned in cell for 4 hours or more; arrest resulted from supermarket accepting check, which had been forged, on plaintiff’s closed bank account. Jones v. Ingles Supermarkets, Inc. (S.C.App. 1987) 293 S.C. 490, 361 S.E.2d 775.

Whether or not a check is a fraudulent one in violation of this section [Code 1962 Section 8‑176] has to be determined in the light of the facts existing at the time of drawing, making, uttering, issuing or delivering such check. State v. McCord (S.C. 1972) 258 S.C. 163, 187 S.E.2d 654.

A check was clearly not a fraudulent one at the time of its issuance and delivery where it was in payment of a preexisting debt and sufficient funds were then on deposit to pay the same. State v. McCord (S.C. 1972) 258 S.C. 163, 187 S.E.2d 654.

A postdated check is a promise to pay, at a future time, and not within the provisions of this section [Code 1962 Section 8‑176]. State v. Brazzell (S.C. 1966) 248 S.C. 118, 149 S.E.2d 339.

No sound distinction can be made between a postdated check and a currently dated check as to which there was no representation by the drawer that it was then good, and there was an understanding between the parties at the time it was issued that it was neither payable nor presentable until a future date. State v. Brazzell (S.C. 1966) 248 S.C. 118, 149 S.E.2d 339.

Applied in State v. Jenkins (S.C. 1952) 222 S.C. 359, 72 S.E.2d 829.

Effect of 1923 amendment requiring presence of fraudulent intent. See State v. Moore (S.C. 1924) 128 S.C. 192, 122 S.E. 672.

The giving of a check dated ahead is but a promise to pay at a future time, and is not within this section [Code 1962 Section 8‑176]. State v. Winter (S.C. 1914) 98 S.C. 294, 82 S.E. 419.

**SECTION 34‑11‑70.** Prima facie evidence of fraudulent intent in drawing check, draft or other written order, reasonable and probable cause for prosecution.

 (a) When a check, a draft, or other written order is not paid by the drawee because the maker or drawer did not have an account with or sufficient funds on deposit with the bank or the person upon which it was drawn when presented or the draft, check, or other written order has an incorrect or insufficient signature on it, and the maker or drawer does not pay the amount due on it, together with a service charge of thirty dollars, within ten days after written notice has been sent by certified mail to the address printed on the check or given at the time it is tendered or provided on a check‑cashing identification card stating that payment was refused upon the instrument, then it constitutes prima facie evidence of fraudulent intent against the maker. Service charges collected pursuant to this section must be paid to the payee of the instrument.

 (1) For purposes of subsection (a), notice must be given by mailing the notice with postage prepaid addressed to the person at the address as printed or written on the instrument. The giving of notice by mail is complete upon the expiration of ten days after the deposit of the notice in the mail. A certificate by the payee that the notice has been sent as required by this section is presumptive proof that the requirements as to notice have been met, regardless of the fact that the notice actually might not have been received by the addressee. The form of notice must be substantially as follows:

“You are notified that a check or instrument, numbered \_\_\_, issued by you on \_\_\_ (date), drawn upon \_\_\_ (name of bank), and payable to \_\_\_, has been dishonored. Pursuant to South Carolina law, you have ten days from the date this notice was mailed to tender payment of the full amount of the check or instrument plus a service charge of thirty dollars, the total amount due being \_\_\_ dollars and \_\_\_ cents. Unless this amount is paid in full within the specified time above, the holder of the check or instrument may turn over the dishonored check or instrument and all other available information relating to this incident to the solicitor or other appropriate officer for criminal prosecution.”

 (2) When a person instituting prosecution gives notice in substantially similar form provided in item (1) to the person upon which the instrument was drawn and waits ten days from the date notice is mailed before instituting the criminal proceedings, there arises a presumption that the prosecution was instituted for reasonable and probable cause, and the person instituting prosecution is immune from civil liability for the giving of the notice.

 (3) A service charge of not more thirty dollars is payable by the drawer of a draft, a check, or other written order to the payee of the instrument when the draft, check, or other written order is presented for payment in whole or in part of a then existing debt including, but not limited to, consumer credit transactions, and is dishonored. This service charge is solely to compensate the payee of the instrument for incurred expenses in processing the dishonored instrument and is not related to a presumption of fraud so that it is not necessary to issue the notice to the person at the address as printed on the instrument set forth in items (1) and (2).

 (b) Any court, including magistrate’s, may dismiss a case under the provisions of this chapter for want of prosecution. When any prosecutions are initiated under this chapter, the party applying for the warrant is held liable for all reasonable administrative costs accruing not to exceed forty‑one dollars if the case is dismissed for want of prosecution. Unless waived by the court, the party applying for the warrant shall notify, orally or otherwise, the court not less than twenty‑four hours before the date and time set for trial that full restitution has been made in connection with the warrant, and the notification relieves that party of the responsibility of prosecution.

 (c) Any court, including magistrates, may dismiss any prosecution initiated pursuant to the provisions of this chapter on satisfactory proof of restitution and payment by the defendant of all administrative costs accruing not to exceed forty‑one dollars submitted before the date set for trial after the issuance of a warrant.

 (d) For purposes of this chapter, subsequent persons receiving a check, draft, or other written order by endorsement from the original payee or a successor endorsee have the same rights that the original payee has against the maker of the instrument, if the maker of the instrument has the same defenses against subsequent persons as he may have had against the original payee. However, the remedies available under this chapter may be exercised only by one party in interest.

HISTORY: 1962 Code Section 8‑177; 1952 Code Section 8‑177; 1942 Code Section 1167; 1932 Code Section 1167; Cr. C. ‘22 Section 60; Cr. C. ‘12 Section 208; 1909 (26) 21; 1914 (28) 489; 1923 (33) 120; 1970 (56) 2053; 1979 Act Nos. 56 Section 2, 93 Section 3; 1983 Act No. 73; 1984 Act No. 422; 1987 Act No. 75 Section 1, eff May 1, 1987; 1988 Act No. 669, Section 2, eff July 1, 1987; 1989 Act No. 14, Section 1, eff March 12, 1989; 1991 Act No. 36, Section 1, eff April 24, 1991; 1995 Act No. 138, Section 4, eff June 28, 1995; 1999 Act No. 87, Section 1, eff June 11, 1999; 2000 Act No. 226, Section 16, eff April 1, 2000; 2002 Act No. 291, Section 1, eff June 3, 2002.

Editor’s Note

2000 Act No. 226 Section 1, effective July 1, 2000, reads as follows:

“This act is known and may be cited as the ‘Magistrates Court Reform Act of 2000’.”

Effect of Amendment

The 1987 amendment added subsection (d).

The 1988 amendment in subsection (a) increased the service charge from ten dollars to fifteen, lowered from fifteen to ten the number of days required for notice, deleted item (3), and made grammatical changes throughout the section.

The 1989 amendment added item (3) in subsection (a).

The 1991 amendment, in subsection (a), increased the service charge from fifteen to twenty dollars, and made grammatical changes.

The 1995 amendment increased the service charge from twenty to twenty‑five dollars.

The 1999 amendment revised service charges in three locations in subsection (a) from “twenty‑five dollars” to “twenty‑five, or, thirty dollars for checks over one hundred dollars”.

The 2000 amendment, in subsections (b) and (c), increased the fee for administrative costs from $25.00 to $41.00.

The 2002 amendment, in subsection (a), deleted in three places “twenty‑five, or,” and “for checks over one hundred dollars” preceding and following “thirty dollars”, respectively.

CROSS REFERENCES

Board of Occupational Therapy, see S.C. Code of Regulations R. 10‑26.

Civil remedy for drawing fraudulent checks, see Section 34‑11‑75.

Crimes against a federally chartered or insured financial institution, and its inapplicability to this section, see Section 34‑3‑110.

Defendant’s liability for court costs up to forty‑one dollars upon conviction or plea for drawing and uttering a fraudulent check or other instrument, see Section 34‑11‑90.

Driver’s license reinstatement fee payment program, see Section 56‑1‑395.

Driver’s license suspension amnesty period, see Section 56‑1‑396.

Effect of payment of dishonored check after initiation of prosecution, see Section 34‑11‑100.

Real Estate Appraisers Board, see S.C. Code of Regulations R. 10‑36.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Clerks of Court Section 11, Fees and Costs.

S.C. Jur. Magistrates and Municipal Judges Section 14, Magistrates’ Courts.

Attorney General’s Opinions

Any fraudulent check conviction in any court in this State pursuant to the provisions of sections 34‑11‑60 et seq. or a municipal ordinance adopted pursuant to such provisions would serve as a prior fraudulent check conviction. Therefore, a case involving the offense of issuing a fraudulent check should be considered a subsequent offense if the individual who issued the check has a prior record of conviction for such offense in any court in this State. 1988 Op Atty Gen, No. 88‑4, p 27.

Magistrates are not authorized pursuant to Section 34‑11‑70 of the Code to dismiss a fraudulent check case that is within the jurisdiction of the court of general sessions. 1986 Op Atty Gen, No. 86‑94, p 286.

$10 service charge provided by Section 34‑11‑70(3) is applicable to dishonored checks given as payment on consumer loans and consumer credit sales. 1985 Op Atty Gen, No. 85‑28, p 96.

Consumer finance company may charge borrower service charge of not more than $10 for dishonored check or draft given to company in payment of existing debt. 1984 Op Atty Gen, No. 84‑108, p. 250.

NOTES OF DECISIONS

In general 1

Under former law 2

1. In general

South Carolina Code Annotated Section 34‑11‑70 protects merchants who follow its procedures, but does not create cause of action in favor of maker of fraudulent check if merchant fails to follow its procedures; payment on fraudulent check within grace period provided by statute does not prevent prosecution for issuing fraudulent check; maker of fraudulent check did not establish claim of false arrest or false imprisonment where merchant who received bad check instituted criminal proceedings against maker within 15 days of giving notice required by SC Code Anno. Section 34‑11‑70; maker of fraudulent check did not establish claim of malicious prosecution against merchant who received bad check on grounds that merchant instituted criminal proceedings against maker within 15 days of notice required by SC Code Anno. Section 34‑11‑70, as maker of fraudulent check admitted that when she wrote checks she knew she did not have sufficient funds in violation ofSection 34‑11‑60. James v. Fast Fare, Inc., 1988, 685 F.Supp. 565.

Section 34‑11‑70 protects merchants who follow its procedures, but does not create cause of action in favor of maker of fraudulent check if procedures are not followed. James v. Fast Fare, Inc., 1988, 685 F.Supp. 565.

Standard Time Payment form, in which defendant agreed to pay remaining balance of restitution and court costs, was insufficient evidence that defendant intended to enter guilty plea to fraudulent check charge, where defendant, who was charged by warrant, not ticket, did not appear before magistrate to enter plea. State v. Truesdale (S.C.App. 2001) 345 S.C. 542, 548 S.E.2d 896, rehearing denied. Criminal Law 273(4.1)

In an action for malicious prosecution, the trial court correctly charged the presumption established by former Section 34‑11‑70 in instructing: “Now, when the person who ... is instituting the prosecution ... gives that notice by mailing that notice, whether or not it’s received ... and waits ten days after mailing that notice before instituting criminal prosecution by taking out a warrant, then there arrives [sic] what the law calls a rebuttable presumption that the prosecution was instituted for reasonable and probable cause. Smith v. Harris‑Teeter Supermarkets, Inc. (S.C.App. 1985) 285 S.C. 445, 330 S.E.2d 316.

Where there was no direct evidence that the party instituting criminal proceedings mailed the letters which allegedly constituted notice under former Section 34‑11‑70, and the maker of the check denied receiving them, it was for the jury to determine whether notice was mailed, and the trial court did not err in refusing to rule as a matter of law that the prosecution of the maker on a fraudulent check charge was instituted for reasonable and probable cause. Smith v. Harris‑Teeter Supermarkets, Inc. (S.C.App. 1985) 285 S.C. 445, 330 S.E.2d 316.

2. Under former law

This section [Code 1962 Section 8‑177] applies only to checks within the meaning of Code 1962 Section 8‑176. State v. McCord (S.C. 1972) 258 S.C. 163, 187 S.E.2d 654.

Code 1962 section inapplicable to mere promise to pay. If a check is a mere promise to pay, rather than a check within the purview of Code 1962 Section 8‑176, the case of the prosecution is not aided or supported by the presumption arising under the provisions of this section [Code 1962 Section 8‑177], since that section applies only to checks within the meaning of Code 1962 Section 8‑176. State v. Brazzell (S.C. 1966) 248 S.C. 118, 149 S.E.2d 339.

Inability to pay resulting from bankruptcy may be considered by the jury in rebuttal of the statutory presumption of fraudulent intent in the uttering of the checks. State v. Sutton (S.C. 1955) 228 S.C. 314, 89 S.E.2d 874.

Code 1962 section creates rule of evidence. The provisions of this section [Code 1962 Section 8‑177] merely create a rule of evidence to the effect that the facts mentioned will, though standing alone, give rise to the presumption of fraudulent intent. Turner v. Montgomery Ward & Co. (S.C. 1932) 165 S.C. 253, 163 S.E. 796.

The amendment of 1923 not directing that prosecution for drawing and uttering a check, without having sufficient deposit to meet it, shall be discontinued on payment of amount after seven days, the prosecution still had the right to proceed with the trial of the case, notwithstanding such payment, and so defendant had right to insist on a trial. State v. Lackey (S.C. 1927) 142 S.C. 62, 140 S.E. 232.

Effect of payment. The clause of this section [Code 1962 Section 8‑177] permitting payment within seven days provides ample protection to one who innocently may have broken the law, and also offers a privilege to one who has guiltily done so. It is also conclusive that only the fraud mongers were aimed at by the law. State v. Moore (S.C. 1924) 128 S.C. 192, 122 S.E. 672.

Sufficiency of evidence. In prosecution for drawing draft on employer payable to named bank without sufficient funds with employer to meet the draft, in violation of Code 1962 Section 8‑176, in which there was no evidence that he did not have ample money in the hands of his employer to meet the draft, or that the draft was turned down for that reason, or that he obtained any money from the bank, and where the evidence showed that the cashier of the bank to whom he had given draft represented third party from whom employee has purchased goods for employer and did not act in his capacity as cashier of the bank, the court should have directed a verdict for the defendant. State v. Poe (S.C. 1921) 118 S.C. 144, 110 S.E. 118. False Pretenses 51

**SECTION 34‑11‑75.** Civil remedy for drawing and uttering of fraudulent checks, drafts, or other written order.

 As used in this section, “check” means a check, draft, or other written order drawn on a bank or depository.

 (1) In addition to criminal penalties, a person who knowingly or with fraudulent intent, as defined in and as may be established by prima facie evidence under the provisions of Section 34‑11‑70, draws, makes, utters, or issues and delivers to another a check drawn on a bank or depository that refuses to honor it because the maker or drawer does not have sufficient funds on deposit in or credit with the bank or depository with which to pay the check upon presentation and who fails to pay the same amount in cash to the payee, within thirty days following written demand, is liable to the payee for the amount owing on the check and for damages of the lesser of five hundred dollars or three times the amount owing on the check. In an action under this section, the court or jury may waive all or part of the treble damages upon a finding that the defendant’s failure to satisfy the dishonored check was due to the defendant’s recent discharge from his employment, personal or family illness, or personal or family catastrophic loss.

 The written demand must:

 (a) describe the check and the circumstances of its dishonor;

 (b) contain a demand for payment and a notice of intent to file suit for treble damages under this section if payment is not received within thirty days; and

 (c) be mailed by certified mail to the defendant at his last known address.

 (2) In an action under item (1), the presiding judge may award the prevailing party, as part of the court costs payable, a reasonable attorney’s fee to the attorney representing the prevailing party in the action.

 (3) It is an affirmative defense, in addition to other defenses, to an action under this section if it is found that:

 (a) full satisfaction of the amount of the check was made before the beginning of the action;

 (b) the bank or depository erred in dishonoring the check; or

 (c) the acceptor of the check knew at the time of acceptance that there were insufficient funds on deposit in the bank or depository with which to cause the check to be honored.

HISTORY: 1990 Act No. 332, Section 1, eff February 20, 1990.

**SECTION 34‑11‑80.** Stopping payment on check, draft or order with intent to defraud.

 It shall be unlawful for any person with intent to defraud to stop payment on any check, draft or other written order on any bank or depository for the payment of money or its equivalent when such check, draft or other written order was given to obtain money, credit, goods or services; provided, that such money, credit, goods or services were as represented at the time of the issuance of any check, draft or written order. Any person so convicted shall be punished by a fine or imprisonment as provided for in Section 34‑11‑90.

 This section shall not apply to a postdated check nor to any check, draft or written order where the payee or holder thereof knows or has good and sufficient reason to believe that the drawer did not have sufficient funds on deposit to his credit with the drawee to insure payment thereof.

HISTORY: 1962 Code Section 8‑177.1; 1970 (56) 2056.

CROSS REFERENCES

Right to stop payment, see Section 36‑4‑403.

Attorney General’s Opinions

Any fraudulent check conviction in any court in this State pursuant to the provisions of sections 34‑11‑60 et seq. or a municipal ordinance adopted pursuant to such provisions would serve as a prior fraudulent check conviction. Therefore, a case involving the offense of issuing a fraudulent check should be considered a subsequent offense if the individual who issued the check has a prior record of conviction for such offense in any court in this State. 1988 Op Atty Gen, No. 88‑4, p 27.

**SECTION 34‑11‑90.** Jurisdiction of offenses and penalties.

 A person who violates the provisions of this chapter, upon conviction, must be punished as follows:

 If the amount of the instrument is one thousand dollars or less, it must be tried exclusively in a magistrates court. A municipal governing body, by ordinance, may adopt by reference the provisions of this chapter as an offense under its municipal ordinances and by so doing authorizes its municipal court to try violations of this chapter. If the amount of the instrument is over one thousand dollars, it must be tried in the court of general sessions or any other court having concurrent jurisdiction. Notwithstanding the provisions of this paragraph, a person who violates the provisions of this chapter, upon conviction for a third or subsequent conviction, may be tried in either a magistrates court or in the court of general sessions.

 (a) Convictions in a magistrates court are punishable as follows:

 (1) for a first conviction, if the amount of the instrument is five hundred dollars or less, by a fine of not less than fifty dollars nor more than two hundred dollars or by imprisonment for not more than thirty days;

 (2) for a first conviction, if the amount of the instrument is more than five hundred dollars but not greater than one thousand dollars, by a fine of not less than three hundred nor more than five hundred dollars or by imprisonment for not more than thirty days, or both;

 (3) for a second or subsequent conviction, if the amount of the instrument is five hundred dollars or less, by a fine of two hundred dollars or by imprisonment for not more than thirty days;

 (4) for a second or subsequent conviction, if the amount of the instrument is more than five hundred dollars but not greater than one thousand dollars, by a fine of not more than five hundred dollars or by imprisonment for not more than thirty days, or both.

 (b) Convictions in the court of general sessions or any other court having concurrent jurisdiction are punishable as follows: for a first conviction by a fine of not less than three hundred dollars nor more than one thousand dollars or by imprisonment for not more than two years, or both; and for a second or subsequent conviction by a fine of not less than five hundred dollars nor more than two thousand dollars and imprisonment for not less than thirty days nor more than ten years.

 (c) After a first offense conviction for drawing and uttering a fraudulent check or other instrument in violation of Section 34‑11‑60 within its jurisdiction, the court shall, at the time of sentence, suspend the imposition or execution of a sentence upon a showing of satisfactory proof of restitution and payment by the defendant of all reasonable court costs accruing not to exceed forty‑one dollars. For a second or subsequent conviction for a violation of Section 34‑11‑60, the suspension of the imposition or execution of the sentence is discretionary with the court.

 (d) After a conviction or plea for drawing and uttering a fraudulent check or other instrument in violation of Section 34‑11‑60 and the defendant is charged or fined, he shall pay in addition to the fine all reasonable court costs accruing, not to exceed forty‑one dollars, and the service charge provided in Section 34‑11‑70.

 (e) After a conviction under this section on a first offense, the defendant may, after one year from the date of the conviction, apply, or cause someone acting on his behalf to apply, to the court for an order expunging the records of the arrest and conviction. This provision does not apply to any crime classified as a felony. If the defendant has had no other conviction during the one‑year period following the conviction under this section, the court shall issue an order expunging the records. No person has any rights under this section more than one time. After the expungement, the South Carolina Law Enforcement Division is required to keep a nonpublic record of the offense and the date of its expungement to ensure that no person takes advantage of the rights permitted by this subsection more than once. This nonpublic record is not subject to release under Section 34‑11‑95, the Freedom of Information Act, or any other provision of law except to those authorized law or court officials who need this information in order to prevent the rights afforded by this subsection from being taken advantage of more than once.

 As used in this section the term “conviction” shall include the entering of a guilty plea, the entering of a plea of nolo contendere, or the forfeiting of bail. A conviction is classified as a felony if the instrument drawn or uttered in violation of this chapter exceeds the amount of five thousand dollars.

 Each instrument drawn or uttered in violation of this chapter constitutes a separate offense.

HISTORY: 1962 Code Section 8‑178; 1952 Code Section 8‑178; 1942 Code Section 1167; 1932 Code Section 1167; Cr. C. ‘22 Section 60; Cr. C. ‘12 Section 208; 1909 (26) 21; 1914 (28) 489; 1923 (33) 120; 1954 (48) 1444; 1960 (51) 1929; 1970 (56) 2053; 1979 Act Nos. 56 Section 3, 93 Section 1; 1983 Act No. 133 Sections 1, 3; 1984 Act No. 423; 1989 Act No. 174, Sections 1, 2, eff ninety days after approval by the Governor (approved June 8, 1989); 1990 Act No. 609, Section 1, eff June 25, 1990; 2000 Act No. 226, Section 17, eff April 1, 2000; 2000 Act No. 257, Section 8, eff May 1, 2000.

Editor’s Note

2000 Act No. 226 Section 1, effective July 1, 2000, reads as follows:

“This act is known and may be cited as the ‘Magistrates Court Reform Act of 2000’.”

Effect of Amendment

The 1989 amendment revised the opening paragraph and subsections (a) and (b) to increase the jurisdiction of magistrates to hear first and second offense violations, to specify the proper court for third and subsequent offenses, and to increase the penalties.

The 1990 amendment revised item (e) by adding the fifth and sixth sentences.

The first 2000 amendment (by Act No. 226) increased the jurisdiction of magistrates over fraudulent instruments from $500.00 to $1,000.00; rewrote paragraph (a); and increased court costs to be paid by a defendant from $20.00 to $41.00; and made language changes throughout.

The second 2000 amendment (by Act No. 257), in subsection (a)(3), added “not more” and, in subsection (a)(4), substituted “more” for “less” in two places.

CROSS REFERENCES

Authority of magistrate to suspend sentence below minimum sentence provided by this section, see Section 22‑3‑800.

Exception to percentage formula for allocating monies generated by courts from fines and assessments, see Section 14‑1‑205.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Clerks of Court Section 10, Duties.

S.C. Jur. Clerks of Court Section 11, Fees and Costs.

S.C. Jur. Governor Section 37, Expungement.

S.C. Jur. Probation, Parole, and Pardon Section 30, The Order of Pardon and Its Effect.

Attorney General’s Opinions

A defendant could not receive an expungement under Section 22‑5‑910 and then subsequently obtain an expungement for a second conviction under Section 34‑1 l‑90(e). S.C. Op.Atty.Gen. (Oct. 29, 2013) 2013 WL 6009577.

A defendant is not entitled to the expungement of more than one fraudulent check conviction. S.C. Op.Atty.Gen. (Oct. 29, 2013) 2013 WL 6009577.

Magistrate may impose fine, jail time and order restitution in fraudulent check violation. 1993 Op Atty Gen No. 93‑54.

Expungement may be sought pursuant to Section 34‑11‑90 if defendant has been convicted of issuing single fraudulent check where such is first offense and defendant has no other convictions during one‑year period following conviction, but where defendant is convicted during single court appearance for issuing more than one fraudulent check, expungement would not be appropriate. 1990 Op Atty Gen No. 90‑34.

A magistrate is authorized to sentence offenders to attend a program for fraudulent check offenders conducted by a nonprofit organization as a condition of a suspended sentence imposed on an individual convicted of issuing a fraudulent check. 1988 Op Atty Gen, No. 88‑73, p 209.

Any fraudulent check conviction in any court in this State pursuant to the provisions of sections 34‑11‑60 et seq. or a municipal ordinance adopted pursuant to such provisions would serve as a prior fraudulent check conviction. Therefore, a case involving the offense of issuing a fraudulent check should be considered a subsequent offense if the individual who issued the check has a prior record of conviction for such offense in any court in this State. 1988 Op Atty Gen, No. 88‑4, p 27.

Magistrates are not authorized pursuant to Section 34‑11‑70 of the Code to dismiss a fraudulent check case that is within the jurisdiction of the court of general sessions. 1986 Op Atty Gen, No. 86‑94, p 286.

Section 34‑11‑90, which provides for expungement of records of arrest and conviction of fraudulent check defendant, applies to such records maintained by magistrate’s court or municipal court. 1985 Op Atty Gen, No. 85‑122, p 332.

A magistrate is without authority to order the expungement of the record of arrest and conviction of a defendant convicted of violating the fraudulent check act. 1979 Op Atty Gen, No 79‑108, p 154.

NOTES OF DECISIONS

In general 1

1. In general

Cited in Singletary v Wilson, 191 SC 153, 3 SE2d 802 (1939). State v Sutton, 228 SC 314, 89 SE2d 874 (1955).

**SECTION 34‑11‑95.** Report of convictions to South Carolina Law Enforcement Division; release of information.

 (a) A first offense prosecution or second offense resulting in a conviction for violation of Section 34‑11‑60 shall be reported by the court hearing the case to the Communications and Records Division of the South Carolina Law Enforcement Division which shall keep a record of such conviction.

 (b) The South Carolina Law Enforcement Division, upon request, shall release all information collected under this section to any law enforcement agency, court or other authorized person.

HISTORY: 1979 Act No. 93 Section 4.

CROSS REFERENCES

Criminal information and communication system of South Carolina Law Enforcement Division, see Sections 23‑3‑110 et seq.

Nonpublic record of expungement of criminal record not subject to release under this section, see Section 22‑5‑910.

Records of expunged arrest and conviction records are not subject to release under this section, see Section 34‑11‑90.

Attorney General’s Opinions

Any fraudulent check conviction in any court in this State pursuant to the provisions of sections 34‑11‑60 et seq. or a municipal ordinance adopted pursuant to such provisions would serve as a prior fraudulent check conviction. Therefore, a case involving the offense of issuing a fraudulent check should be considered a subsequent offense if the individual who issued the check has a prior record of conviction for such offense in any court in this State. 1988 Op Atty Gen, No. 88‑4, p 27.

**SECTION 34‑11‑100.** Effect of payment of dishonored check, draft or order after institution of prosecution.

 After prosecution is initiated as provided in this chapter, the payment of a dishonored check, draft or order shall not constitute a defense or grounds for dismissal of charges brought under this chapter, but such payment may be considered in mitigation of the sentence by the trial judge or magistrate.

HISTORY: 1962 Code Section 8‑178.1; 1970 (56) 2053.

CROSS REFERENCES

Dismissal of prosecution upon proof of restitution under certain circumstances, see Section 34‑11‑70.

Attorney General’s Opinions

Any fraudulent check conviction in any court in this State pursuant to the provisions of sections 34‑11‑60 et seq. or a municipal ordinance adopted pursuant to such provisions would serve as a prior fraudulent check conviction. Therefore, a case involving the offense of issuing a fraudulent check should be considered a subsequent offense if the individual who issued the check has a prior record of conviction for such offense in any court in this State. 1988 Op Atty Gen, No. 88‑4, p 27.

Partial restitution is not a basis for preventing prosecution and complete restitution permits but does not automatically terminate prosecution initiated for fraudulent checks. 1983 Op Atty Gen, No. 83‑57, p. 90.

**SECTION 34‑11‑110.** Adverse claimant of deposit must obtain court process or give bond; exception as to fiduciary deposits.

 Notice to any bank or trust company doing business in this State of an adverse claim to a deposit standing on its books to the credit of any person shall not be effectual to cause the bank or trust company to recognize the adverse claimant unless: (1) The claimant first procures a restraining order, injunction or other appropriate process against the bank or trust company from a court of competent jurisdiction wherein the person to whose credit the deposit stands is made a party; or (2) the claimant first executes and delivers to the bank or trust company, in form and with sureties acceptable to it, a bond, indemnifying the bank or trust company from all liability, loss, damage, costs and expenses, resulting from the payment of the adverse claim or the dishonor of any check or other order of the person to whose credit the deposit stands on the books of the bank or trust company. Provided, that this section shall not apply in any instance where the person to whose credit the deposit stands is a fiduciary for such adverse claimant, and the facts constituting such relationship as also the facts showing reasonable cause of belief on the part of the claimant that the fiduciary is about to misappropriate the deposit, are made to appear by the affidavit of the claimant.

HISTORY: 1962 Code Section 8‑179; 1964 (53) 2425.

Attorney General’s Opinions

Any fraudulent check conviction in any court in this State pursuant to the provisions of sections 34‑11‑60 et seq. or a municipal ordinance adopted pursuant to such provisions would serve as a prior fraudulent check conviction. Therefore, a case involving the offense of issuing a fraudulent check should be considered a subsequent offense if the individual who issued the check has a prior record of conviction for such offense in any court in this State. 1988 Op Atty Gen, No. 88‑4, p 27.

NOTES OF DECISIONS

In general 1

1. In general

The trial court did not err in allowing a bank to file an interpleader action regarding the bank account of a partnership, and ignoring the dictates of Section 34‑11‑110 where because of the partners conflicting instructions as to the distribution of funds from the account, the bank was unsure as to which of the parties had an “adverse claim” as referred to by the statute. First Union Nat. Bank of South Carolina v. FCVS Communications (S.C.App. 1996) 321 S.C. 496, 469 S.E.2d 613, rehearing denied, certiorari granted, reversed in part 328 S.C. 290, 494 S.E.2d 429.

**SECTION 34‑11‑120.** Duty of person drawing postdated check to give notice.

 It shall be the duty of the person drawing a postdated check to notify, in writing, the bank or trust company upon which such check is drawn, giving a complete description thereof, including the name of the payee, the date, the number and amount thereof; otherwise, the bank or trust company shall not be liable for erroneously paying such check.

HISTORY: 1982 Act No. 290.

Attorney General’s Opinions

Any fraudulent check conviction in any court in this State pursuant to the provisions of sections 34‑11‑60 et seq. or a municipal ordinance adopted pursuant to such provisions would serve as a prior fraudulent check conviction. Therefore, a case involving the offense of issuing a fraudulent check should be considered a subsequent offense if the individual who issued the check has a prior record of conviction for such offense in any court in this State. 1988 Op Atty Gen, No. 88‑4, p 27.

**SECTION 34‑11‑130.** Payment of withdrawal value of account to beneficiary upon death of trustee.

 Subject to the provisions of Sections 62‑6‑101, et seq., of the South Carolina Probate Code, when an account, including a certificate of deposit, is opened by a person describing himself in the account title as trustee or custodian for another and no other or further notice of the existence and terms of a legal and valid trust than the description is given in writing to a bank, banking institution, or other depository transacting business in this State, in the event of the death of the person so described as trustee or custodian the withdrawal value of the account or any part thereof together with any earnings thereon may be paid to the person for whom the account title indicates the account was opened. The payment or delivery to any beneficiary, beneficiaries, or designated person, or a receipt or acquittance signed by any beneficiary, beneficiaries, or designated person, is for any payment or delivery a valid and sufficient release and discharge of an institution for the payment or delivery made.

HISTORY: 1985 Act No. 128, Section 9; 1990 Act No. 521, Part II, Section 100, eff June 5, 1990.

Effect of Amendment

The 1990 amendment added “Subject to the provisions of Sections 62‑6‑101 et seq. of the South Carolina Probate Code,” at the beginning of the section.

LIBRARY REFERENCES

9 C.J.S., Banks and Banking Section 276.

Attorney General’s Opinions

Any fraudulent check conviction in any court in this State pursuant to the provisions of sections 34‑11‑60 et seq. or a municipal ordinance adopted pursuant to such provisions would serve as a prior fraudulent check conviction. Therefore, a case involving the offense of issuing a fraudulent check should be considered a subsequent offense if the individual who issued the check has a prior record of conviction for such offense in any court in this State. 1988 Op Atty Gen, No. 88‑4, p 27.