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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.

**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.

**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.

**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.

**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.

**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.

**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.

**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.

**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.

**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.

**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.

**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.

**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.

**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.

**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.