

Select Year: 2009

The 2009 Florida Statutes

[Title XLVI](#)[Chapter 832](#)[View Entire Chapter](#)

CRIMES

VIOLATIONS INVOLVING CHECKS AND DRAFTS

832.062 Prosecution for worthless checks, drafts, debit card orders, or electronic funds transfers made to pay any tax or associated amount administered by the Department of Revenue.--

(1) It is unlawful for any person, firm, or corporation to draw, make, utter, issue, or deliver to the Department of Revenue any check, draft, or other written order on any bank or depository, to use a debit card, to make, send, instruct, order, or initiate any electronic funds transfer, or to cause or direct the making, sending, instructing, ordering, or initiating of any electronic funds transfer, for the payment of any taxes, penalties, interest, fees, or associated amounts administered by the Department of Revenue, knowing at the time of the drawing, making, uttering, issuing, or delivering such check, draft, or other written order, at the time of using such debit card, at the time of making, sending, instructing, ordering, or initiating any electronic funds transfer, or at the time of causing or directing the making, sending, instructing, ordering, initiating, or executing of any electronic funds transfer, that the maker, drawer, sender, or receiver thereof has not sufficient funds on deposit in or credit with such bank or depository with which to pay the same on presentation. This section does not apply to any check or electronic funds transfer when the Department of Revenue knows or has been expressly notified prior to the drawing or uttering of the check or the sending or initiating of the electronic funds transfer, or has reason to believe, that the drawer, sender, or receiver did not have on deposit or to the drawer's, sender's, or receiver's credit with the drawee or receiving bank or depository sufficient funds to ensure payment as aforesaid, and this section does not apply to any postdated check.

(2) A violation of this section constitutes a misdemeanor of the second degree, punishable as provided in s. [775.082](#) or s. [775.083](#), unless the check, draft, debit card order, or other written order drawn, made, uttered, issued, or delivered, or electronic funds transfer made, sent, instructed, ordered, or initiated, or caused or directed to be made, sent, instructed, ordered, or initiated is in the amount of \$150 or more. In that event, the violation constitutes a felony of the third degree, punishable as provided in s. [775.082](#), s. [775.083](#), or s. [775.084](#).

(3) For purposes of prosecution, a violation under this section occurs in the county in which the check is issued or the electronic funds transfer is sent and in the county in which it is received. A check will be deemed issued at the residence address of an individual taxpayer and at the business address of a business taxpayer.

(4)(a) In any prosecution or action under this section, the making, drawing, uttering, or delivery of a check, draft, or order; the making, sending, instructing, ordering, or initiating of any electronic funds

transfer; or causing the making, sending, instructing, ordering, or initiating of any electronic transfer payment, any of which are refused by the drawee because of lack of funds or credit, is prima facie evidence of intent to defraud or knowledge of insufficient funds in, or credit with, such bank, banking institution, trust company, or other depository, unless the maker, drawer, sender, instructor, orderer, or initiator, or someone for him or her, has paid the holder thereof the amount due thereon, together with a service charge, which may not exceed the service fees authorized under s. 832.08(5), or an amount of up to 5 percent of the face amount of the check or the amount of the electronic funds transfer, whichever is greater, within 15 days after written notice has been sent to the address printed on the check, or given or on file at the time of issuance, that such check, draft, order, or electronic funds transfer has not been paid to the holder thereof, and has paid the bank fees incurred by the holder. In the event of legal action for recovery, the maker, drawer, sender, instructor, orderer, or initiator may be additionally liable for court costs and reasonable attorney's fees. Notice mailed by certified or registered mail that is evidenced by return receipt, or by first-class mail that is evidenced by an affidavit of service of mail, to the address printed on the check or given or on file at the time of issuance shall be deemed sufficient and equivalent to notice having been received by the maker, drawer, sender, instructor, orderer, or initiator, whether such notice is returned undelivered or not. The form of the notice shall be substantially as follows:

"You are hereby notified that a check or electronic funds transfer, numbered _____, in the face amount of \$_____, issued or initiated by you on (date), drawn upon (name of bank), and payable to _____, has been dishonored. Pursuant to Florida law, you have 15 days following the date of this notice to tender payment of the full amount of such check or electronic funds transfer plus a service charge of \$25, if the face value does not exceed \$50; \$30, if the face value exceeds \$50 but does not exceed \$300; \$40, if the face value exceeds \$300; or an amount of up to 5 percent of the face amount of the check, whichever is greater, the total amount due being \$_____ and _____ cents. Unless this amount is paid in full within the time specified above, the holder of such check or electronic funds transfer may turn over the dishonored check or electronic funds transfer and all other available information relating to this incident to the state attorney for criminal prosecution. You may be additionally liable in a civil action for triple the amount of the check or electronic funds transfer, but in no case less than \$50, together with the amount of the check or electronic funds transfer, a service charge, court costs, reasonable attorney's fees, and incurred bank fees, as provided in s. 68.065, Florida Statutes."

Subsequent persons receiving a check, draft, order, or electronic funds transfer 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 subsequent persons give notice in a substantially similar form to that provided above. Subsequent persons providing such notice are immune from civil liability for the giving of such notice and for proceeding under the forms of such notice so long as the maker of the instrument has the same defenses against these

subsequent persons as against the original payee. However, the remedies available under this section may be exercised only by one party in interest.

(b) When a check, draft, order, or electronic funds transfer is drawn on a bank in which the maker, drawer, sender, instructor, orderer, or initiator has no account or a closed account, it shall be presumed that the check, draft, or order was issued, or the electronic funds transfer was initiated, with intent to defraud, and the notice requirement set forth in this section shall be waived.

(c) This subsection does not apply if it is determined that the dishonored check, draft, order, or electronic funds transfer was refused due to an unintentional error committed by the drawee, maker, drawer, sender, instructor, orderer, initiator, or holder, and the unintentional error is substantiated.

(5)(a) In any prosecution or action under this section, a check, draft, order, or electronic funds transfer for which the information required in paragraph (b) is available at the time of issuance constitutes prima facie evidence of the identity of the person issuing the check, draft, order, or electronic funds transfer and that such person is authorized to draw upon the named account.

(b) To establish this prima facie evidence:

1. If a check or electronic funds transfer is received by the Department of Revenue through the mail or by delivery to a representative of the Department of Revenue or by electronic means, the prima facie evidence referred to in paragraph (a) may be established by presenting the original tax return, certificate, license, application for certificate or license, enrollment and authorization for the e-services program, or other document relating to amounts owed by that person or taxpayer which the check or electronic funds transfer purports to pay for, bearing the signature of the person who signed the check or electronic signature of the person who initiated the electronic funds transfer, or by presenting a copy of the information required in subparagraph 2. which is on file with the acceptor of the check or electronic funds transfer together with the signature or electronic signature of the person presenting the check or initiating the electronic funds transfer. The use of taxpayer information for purposes of establishing the identity of a person under this paragraph shall be deemed a use of such information for official purposes.

2. The person accepting such check or electronic funds transfer must obtain the following information regarding the identity of the person presenting the check: the presenter's or initiator's full name, residence address, home telephone number, business telephone number, place of employment, gender, date of birth, and height.

History.--s. 11, ch. 87-102; s. 23, ch. 90-203; s. 1305, ch. 97-102; s. 30, ch. 2003-254; s. 37, ch. 2007-106; s. 164, ch. 2008-4.