

1 AN ACT in relation to criminal law.

2 Be it enacted by the People of the State of Illinois,
3 represented in the General Assembly:

4 Section 5. The Criminal Code of 1961 is amended by
5 adding Section 17-1b as follows:

6 (720 ILCS 5/17-1b new)

7 Sec. 17-1b. State's Attorney's bad check diversion
8 program.

9 (a) In this Section:

10 "Offender" means a person charged with, or for whom
11 probable cause exists to charge the person with, deceptive
12 practices.

13 "Pretrial diversion" means the decision of a prosecutor
14 to refer an offender to a diversion program on condition that
15 the criminal charges against the offender will be dismissed
16 after a specified period of time, or the case will not be
17 charged, if the offender successfully completes the program.

18 "Restitution" means all amounts payable to a victim of
19 deceptive practices under the bad check diversion program
20 created under this Section, including the amount of the check
21 and any transaction fees payable to a victim as set forth in
22 subsection (g) but does not include amounts recoverable under
23 Section 3-806 of the Uniform Commercial Code and Section
24 17-1a of this Code.

25 (b) A State's Attorney may create within his or her
26 office a bad check diversion program for offenders who agree
27 to voluntarily participate in the program instead of
28 undergoing prosecution. The program may be conducted by the
29 State's Attorney or by a private entity under contract with
30 the State's Attorney. If the State's Attorney contracts with
31 a private entity to perform any services in operating the

1 program, the entity shall operate under the supervision,
2 direction, and control of the State's Attorney. Any private
3 entity providing services under this Section is not a
4 "collection agency" as that term is defined under the
5 Collection Agency Act.

6 (c) If an offender is referred to the State's Attorney,
7 the State's Attorney may determine whether the offender is
8 appropriate for acceptance in the program. The State's
9 Attorney may consider, but shall not be limited to
10 consideration of, the following factors:

11 (1) the amount of the check that was drawn or
12 passed;

13 (2) prior referrals of the offender to the program;

14 (3) whether other charges of deceptive practices
15 are pending against the offender;

16 (4) the evidence presented to the State's Attorney
17 regarding the facts and circumstances of the incident;

18 (5) the offender's criminal history; and

19 (6) the reason the check was dishonored by the
20 financial institution.

21 (d) The bad check diversion program may require an
22 offender to do one or more of the following:

23 (i) pay for, at his or her own expense, and
24 successfully complete an educational class held by the
25 State's Attorney or a private entity under contract with
26 the State's Attorney;

27 (ii) make full restitution for the offense;

28 (iii) pay a per-check administrative fee as set
29 forth in this Section.

30 (e) If an offender is diverted to the program, the
31 State's Attorney shall agree in writing not to prosecute the
32 offender upon the offender's successful completion of the
33 program conditions. The State's Attorney's agreement to
34 divert the offender shall specify the offenses that will not

1 be prosecuted by identifying the checks involved in the
2 transactions.

3 (f) The State's Attorney, or private entity under
4 contract with the State's Attorney, may collect a fee from an
5 offender diverted to the State's Attorney's bad check
6 diversion program. This fee may be deposited in a bank
7 account maintained by the State's Attorney for the purpose of
8 depositing fees and paying the expenses of the program. The
9 State's Attorney may require that the fee be paid directly to
10 a private entity that administers the program under a
11 contract with the State's Attorney. The amount of the
12 administrative fees collected by the State's Attorney under
13 the program may not exceed \$35 per check. The county board
14 may, however, by ordinance, increase the fees allowed by this
15 Section if the increase is justified by an acceptable cost
16 study showing that the fees allowed by this Section are not
17 sufficient to cover the cost of providing the service.

18 (g) (1) The private entity shall be required to
19 maintain adequate general liability insurance of
20 \$1,000,000 per occurrence as well as adequate coverage
21 for potential loss resulting from employee dishonesty.
22 The State's Attorney may require a surety bond payable to
23 the State's Attorney if in the State's Attorney's opinion
24 it is determined that the private entity is not
25 adequately insured or funded.

26 (2) (A) Each private entity that has a contract
27 with the State's Attorney to conduct a bad check
28 diversion program shall at all times maintain a separate
29 bank account in which all moneys received from the
30 offenders participating in the program shall be
31 deposited, referred to as a "Trust Account", except that
32 negotiable instruments received may be forwarded directly
33 to a victim of the deceptive practice committed by the
34 offender if that procedure is provided for by a writing

1 executed by the victim. Moneys received shall be so
2 deposited within 5 business days after posting to the
3 private entity's books of account. There shall be
4 sufficient funds in the trust account at all times to pay
5 the victims the amount due them.

6 (B) The trust account shall be established in a
7 bank, savings and loan association, or other
8 recognized depository which is federally or State
9 insured or otherwise secured as defined by rule. If
10 the account is interest bearing, the private entity
11 shall pay to the victim interest earned on funds on
12 deposit after the 60th day.

13 (C) Each private entity shall keep on file the
14 name of the bank, savings and loan association, or
15 other recognized depository in which each trust
16 account is maintained, the name of each trust
17 account, and the names of the persons authorized to
18 withdraw funds from each account. The private
19 entity, within 30 days of the time of a change of
20 depository or person authorized to make withdrawal,
21 shall update its files to reflect that change. An
22 examination and audit of a private entity's trust
23 accounts may be made by the State's Attorney as the
24 State's Attorney deems appropriate. A trust account
25 financial report shall be submitted annually on
26 forms acceptable to the State's Attorney.

27 (3) The State's Attorney may cancel a contract
28 entered into with a private entity under this Section for
29 any one or any combination of the following causes:

30 (A) Conviction of the private entity or the
31 principals of the private entity of any crime under
32 the laws of any U.S. jurisdiction which is a felony,
33 a misdemeanor an essential element of which is
34 dishonesty, or of any crime which directly relates

1 to the practice of the profession.

2 (B) A determination that the private entity
3 has engaged in conduct prohibited in item (4).

4 (4) The State's Attorney may determine whether the
5 private entity has engaged in the following prohibited
6 conduct:

7 (A) Using or threatening to use force or
8 violence to cause physical harm to an offender, his
9 or her family, or his or her property.

10 (B) Threatening the seizure, attachment, or
11 sale of an offender's property where such action can
12 only be taken pursuant to court order without
13 disclosing that prior court proceedings are
14 required.

15 (C) Disclosing or threatening to disclose
16 information adversely affecting an offender's
17 reputation for credit worthiness with knowledge the
18 information is false.

19 (D) Initiating or threatening to initiate
20 communication with an offender's employer unless
21 there has been a default of the payment of the
22 obligation for at least 30 days and at least 5 days
23 prior written notice, to the last known address of
24 the offender, of the intention to communicate with
25 the employer has been given to the employee, except
26 as expressly permitted by law or court order.

27 (E) Communicating with the offender or any
28 member of the offender's family at such a time of
29 day or night and with such frequency as to
30 constitute harassment of the offender or any member
31 of the offender's family. For purposes of this
32 clause (E) the following conduct shall constitute
33 harassment:

34 (i) Communicating with the offender or any

1 member of his or her family at any unusual time or
2 place or a time or place known or which should be
3 known to be inconvenient to the offender. In the
4 absence of knowledge of circumstances to the
5 contrary, a private entity shall assume that the
6 convenient time for communicating with a consumer is
7 after 8 o'clock a.m. and before 9 o'clock p.m. local
8 time at the offender's residence.

9 (ii) The threat of publication or publication
10 of a list of offenders who allegedly refuse to pay
11 restitution, except by the State's Attorney.

12 (iii) The threat of advertisement or
13 advertisement for sale of any restitution to coerce
14 payment of the restitution.

15 (iv) Causing a telephone to ring or engaging
16 any person in telephone conversation repeatedly or
17 continuously with intent to annoy, abuse, or harass
18 any person at the called number.

19 (v) Using profane, obscene or abusive
20 language in communicating with an offender, his or
21 her family, or others.

22 (vi) Disclosing or threatening to disclose
23 information relating to an offender's case to any
24 other person except the victim and appropriate law
25 enforcement personnel.

26 (vii) Disclosing or threatening to disclose
27 information concerning the alleged criminal act
28 which the private entity knows to be reasonably
29 disputed by the offender without disclosing the fact
30 that the offender disputes the accusation.

31 (viii) Engaging in any conduct which the
32 State's Attorney finds was intended to cause and did
33 cause mental or physical illness to the offender or
34 his or her family.

1 (ix) Attempting or threatening to enforce a
2 right or remedy with knowledge or reason to know
3 that the right or remedy does not exist.

4 (x) Except as authorized by the State's
5 Attorney, using any form of communication which
6 simulates legal or judicial process or which gives
7 the appearance of being authorized, issued or
8 approved by a governmental agency or official or by
9 an attorney at law when it is not.

10 (xi) Using any badge, uniform, or other
11 indicia of any governmental agency or official,
12 except as authorized by law or by the State's
13 Attorney.

14 (xii) Except as authorized by the State's
15 Attorney, conducting business under any name or in
16 any manner which suggests or implies that the
17 private entity is bonded if such private entity is
18 or is a branch of or is affiliated with any
19 governmental agency or court if such private entity
20 is not.

21 (xiii) Misrepresenting the amount of the
22 restitution alleged to be owed.

23 (xiv) Except as authorized by the State's
24 Attorney, representing that an existing restitution
25 amount may be increased by the addition of
26 attorney's fees, investigation fees, or any other
27 fees or charges when those fees or charges may not
28 legally be added to the existing restitution.

29 (xv) Except as authorized by the State's
30 Attorney, representing that the private entity is an
31 attorney at law or an agent for an attorney if the
32 entity is not.

33 (xvi) Collecting or attempting to collect any
34 interest or other charge or fee in excess of the

1 actual restitution or claim unless the interest or
2 other charge or fee is expressly authorized by the
3 State's Attorney, who shall determine what
4 constitutes a reasonable collection fee.

5 (xvii) Communicating or threatening to
6 communicate with an offender when the private entity
7 is informed in writing by an attorney that the
8 attorney represents the offender concerning the
9 claim, unless authorized by the attorney. If the
10 attorney fails to respond within a reasonable period
11 of time, the private entity may communicate with the
12 offender. The private entity may communicate with
13 the offender when the attorney gives his consent.

14 (xviii) Engaging in dishonorable, unethical,
15 or unprofessional conduct of a character likely to
16 deceive, defraud, or harm the public.

17 (5) The State's Attorney shall audit the accounts
18 of the bad check diversion program after notice in
19 writing to the private entity.

20 (6) Any information obtained by a private entity
21 that has a contract with the State's Attorney to conduct
22 a bad check diversion program is confidential information
23 between the State's Attorney and the private entity and
24 may not be sold or used for any other purpose but may be
25 shared with other authorized law enforcement agencies as
26 determined by the State's Attorney.

27 (h) The State's Attorney, or private entity under
28 contract with the State's Attorney, shall recover, in
29 addition to the face amount of the dishonored check or draft,
30 a transaction fee to defray the costs and expenses incurred
31 by a victim who received a dishonored check that was made or
32 delivered by the offender. The face amount of the dishonored
33 check or draft and the transaction fee shall be paid by the
34 State's Attorney or private entity under contract with the

1 State's Attorney to the victim as restitution for the
2 offense. The amount of the transaction fee must not exceed:
3 \$25 if the face amount of the check or draft does not exceed
4 \$100; \$30 if the face amount of the check or draft is greater
5 than \$100 but does not exceed \$250; \$35 if the face amount of
6 the check or draft is greater than \$250 but does not exceed
7 \$500; \$40 if the face amount of the check or draft is greater
8 than \$500 but does not exceed \$1,000; and \$50 if the face
9 amount of the check or draft is greater than \$1,000.

10 (i) The offender, if aggrieved by an action of the
11 private entity contracted to operate a bad check diversion
12 program, may submit a grievance to the State's Attorney who
13 may then resolve the grievance. The private entity must give
14 notice to the offender that the grievance procedure is
15 available. The grievance procedure shall be established by
16 the State's Attorney.