

AN ACT concerning criminal law.

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

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

(720 ILCS 5/17-1b)

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

(a) In this Section:

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

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

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

of this Code.

(b) A State's Attorney may create within his or her office a bad check diversion program for offenders who agree to voluntarily participate in the program instead of undergoing prosecution. The program may be conducted by the State's Attorney or by a private entity under contract with the State's Attorney. If the State's Attorney contracts with a private entity to perform any services in operating the program, the entity shall operate under the supervision, direction, and control of the State's Attorney. Any private entity providing services under this Section is not a "collection agency" as that term is defined under the Collection Agency Act.

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

- (1) the amount of the check that was drawn or passed;
- (2) prior referrals of the offender to the program;
- (3) whether other charges of deceptive practices are pending against the offender;
- (4) the evidence presented to the State's Attorney regarding the facts and circumstances of the incident;
- (5) the offender's criminal history; and
- (6) the reason the check was dishonored by the financial institution.

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

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

(ii) make full restitution for the offense;

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

(e) If an offender is diverted to the program, the State's Attorney shall agree in writing not to prosecute the offender upon the offender's successful completion of the program conditions. The State's Attorney's agreement to divert the offender shall specify the offenses that will not be prosecuted by identifying the checks involved in the transactions.

(f) The State's Attorney, or private entity under contract with the State's Attorney, may collect a fee from an offender diverted to the State's Attorney's bad check diversion program. This fee may be deposited in a bank account maintained by the State's Attorney for the purpose of depositing fees and paying the expenses of the program or for use in the enforcement and prosecution of criminal laws. The State's Attorney may require that the fee be paid directly to a private entity that administers the program under a contract with the State's Attorney. The amount of the administrative fees collected by the State's Attorney under the program may not exceed \$35 per

check. The county board may, however, by ordinance, increase the fees allowed by this Section if the increase is justified by an acceptable cost study showing that the fees allowed by this Section are not sufficient to cover the cost of providing the service.

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

(2) (A) Each private entity that has a contract with the State's Attorney to conduct a bad check diversion program shall at all times maintain a separate bank account in which all moneys received from the offenders participating in the program shall be deposited, referred to as a "Trust Account", except that negotiable instruments received may be forwarded directly to a victim of the deceptive practice committed by the offender if that procedure is provided for by a writing executed by the victim. Moneys received shall be so deposited within 5 business days after posting to the private entity's books of account. There shall be sufficient funds in the trust account at all times to pay the victims the amount due them.

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

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

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

(A) Conviction of the private entity or the principals of the private entity of any crime under the laws of any U.S. jurisdiction which is a felony, a

misdemeanor an essential element of which is dishonesty, or of any crime which directly relates to the practice of the profession.

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

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

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

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

(C) Disclosing or threatening to disclose information adversely affecting an offender's reputation for creditworthiness with knowledge the information is false.

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

law or court order.

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

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

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

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

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

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

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

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

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

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

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

(xi) Using any badge, uniform, or other

indicia of any governmental agency or official, except as authorized by law or by the State's Attorney.

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

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

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

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

(xvi) Collecting or attempting to collect any interest or other charge or fee in excess of the actual restitution or claim unless the interest or

other charge or fee is expressly authorized by the State's Attorney, who shall determine what constitutes a reasonable collection fee.

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

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

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

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

(h) The State's Attorney, or private entity under contract with the State's Attorney, shall recover, in addition to the face amount of the dishonored check or draft, a transaction fee to defray the costs and expenses incurred by a victim who received a dishonored check that was made or delivered by the offender. The face amount of the dishonored check or draft and the transaction fee shall be paid by the State's Attorney or private entity under contract with the State's Attorney to the victim as restitution for the offense. The amount of the transaction fee must not exceed: \$25 if the face amount of the check or draft does not exceed \$100; \$30 if the face amount of the check or draft is greater than \$100 but does not exceed \$250; \$35 if the face amount of the check or draft is greater than \$250 but does not exceed \$500; \$40 if the face amount of the check or draft is greater than \$500 but does not exceed \$1,000; and \$50 if the face amount of the check or draft is greater than \$1,000.

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

(Source: P.A. 93-394, eff. 7-29-03.)