

1 AMENDMENT TO HOUSE BILL 2412

2 AMENDMENT NO. _____. Amend House Bill 2412 as follows:

3 on page 1, line 19 by replacing "a" with "the"; and

4 on page 1, line 22 after "(g)" by inserting "but does not
5 include amounts recoverable under Section 3-806 of the
6 Uniform Commercial Code and Section 17-1a of this Code"; and

7 on page 3, by inserting between lines 15 and 16 the
8 following:

9 "(g) (1) The private entity shall be required to
10 maintain adequate general liability insurance of
11 \$1,000,000 per occurrence as well as adequate coverage
12 for potential loss resulting from employee dishonesty.
13 The State's Attorney may require a surety bond payable to
14 the State's Attorney if in the State's Attorney's opinion
15 it is determined that the private entity is not
16 adequately insured or funded.

17 (2) (A) Each private entity that has a contract
18 with the State's Attorney to conduct a bad check
19 diversion program shall at all times maintain a separate
20 bank account in which all moneys received from the
21 offenders participating in the program shall be
22 deposited, referred to as a "Trust Account", except that

1 negotiable instruments received may be forwarded directly
2 to a victim of the deceptive practice committed by the
3 offender if that procedure is provided for by a writing
4 executed by the victim. Moneys received shall be so
5 deposited within 5 business days after posting to the
6 private entity's books of account. There shall be
7 sufficient funds in the trust account at all times to pay
8 the victims the amount due them.

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

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

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

33 (A) Conviction of the private entity or the
34 principals of the private entity of any crime under

1 the laws of any U.S. jurisdiction which is a felony,
2 a misdemeanor an essential element of which is
3 dishonesty, or of any crime which directly relates
4 to the practice of the profession.

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

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

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

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

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

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

30 (E) Communicating with the offender or any
31 member of the offender's family at such a time of
32 day or night and with such frequency as to
33 constitute harassment of the offender or any member
34 of the offender's family. For purposes of this

1 clause (E) the following conduct shall constitute
2 harassment:

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

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

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

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

22 (v) Using profane, obscene or abusive
23 language in communicating with a offender, his or
24 her family, or others.

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

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

34 (viii) Engaging in any conduct which the

1 State's Attorney finds was intended to cause and did
2 cause mental or physical illness to the offender or
3 his or her family.

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

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

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

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

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

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

32 (xv) Except as authorized by the State's
33 Attorney, representing that the private entity is an
34 attorney at law or an agent for an attorney if the

1 entity is not.

2 (xvi) Collecting or attempting to collect any
3 interest or other charge or fee in excess of the
4 actual restitution or claim unless the interest or
5 other charge or fee is expressly authorized by the
6 State's Attorney, who shall determine what
7 constitutes a reasonable collection fee.

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

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

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

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

30 on page 3, line 16, by replacing "(g)" with "(h)"; and

31 on page 3, line 17, by replacing "may" with "shall"; and

32 on page 3, line 21, after "The", by inserting "face amount of
33 the dishonored check or draft and the"; and

1 on page 3, line 21, after "paid", by inserting "by the
2 State's Attorney or private entity under contract with the
3 State's Attorney"; and

4 on page 3, by inserting below line 30 the following:

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