

SB1202



95TH GENERAL ASSEMBLY

State of Illinois

2007 and 2008

SB1202

Introduced 2/9/2007, by Sen. John J. Millner

SYNOPSIS AS INTRODUCED:

720 ILCS 5/17-1b

Amends the Criminal Code of 1961. Provides that the fees collected from offenders diverted to the State's Attorney's bad check diversion program may also be used in the enforcement and prosecution of criminal laws (rather than for only paying the expenses of the program).

LRB095 10508 RLC 30723 b

A BILL FOR

1 AN ACT concerning 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 changing
5 Section 17-1b as follows:

6 (720 ILCS 5/17-1b)

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 to
14 refer an offender to a diversion program on condition that the
15 criminal charges against the offender will be dismissed after a
16 specified period of time, or the case will not be charged, if
17 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 17-1a

1 of this Code.

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

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

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

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

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

7 (ii) make full restitution for the offense;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 law or court order.

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

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

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

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

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

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

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

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

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

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

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

26 (xi) Using any badge, uniform, or other

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

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

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

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

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

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

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

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

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

1 (h) The State's Attorney, or private entity under contract
2 with the State's Attorney, shall recover, in addition to the
3 face amount of the dishonored check or draft, a transaction fee
4 to defray the costs and expenses incurred by a victim who
5 received a dishonored check that was made or delivered by the
6 offender. The face amount of the dishonored check or draft and
7 the transaction fee shall be paid by the State's Attorney or
8 private entity under contract with the State's Attorney to the
9 victim as restitution for the offense. The amount of the
10 transaction fee must not exceed: \$25 if the face amount of the
11 check or draft does not exceed \$100; \$30 if the face amount of
12 the check or draft is greater than \$100 but does not exceed
13 \$250; \$35 if the face amount of the check or draft is greater
14 than \$250 but does not exceed \$500; \$40 if the face amount of
15 the check or draft is greater than \$500 but does not exceed
16 \$1,000; and \$50 if the face amount of the check or draft is
17 greater than \$1,000.

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

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