

1 AMENDMENT TO SENATE BILL 211

2 AMENDMENT NO. _____. Amend Senate Bill 211 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) Before entering into a contract with a
10 private entity under this Section, the State's Attorney
11 shall require the private entity to file and maintain in
12 force a surety bond, issued by an insurance company
13 authorized to transact fidelity and surety business in
14 the State of Illinois. The bond shall be for the benefit
15 of the victims of deceptive practices who obtain a
16 judgment from a court of competent jurisdiction based on
17 the failure of the private entity to remit money
18 collected on account and owed to the victims of deceptive
19 practices. No action on the bond shall be commenced more
20 than one year after the victim of the deceptive practice
21 obtains a judgment against the private entity from a
22 court of competent jurisdiction. The bond shall be in

1 the form prescribed by the State's Attorney in an amount
2 set by the State's Attorney. The bond shall be continuous
3 in form and run concurrently with the contract period
4 unless terminated by the insurance company. An insurance
5 company may terminate a bond and avoid further liability
6 by filing a 60-day notice of termination with the State's
7 Attorney and at the same time sending the same notice to
8 the private entity. The contract with the State's
9 Attorney shall be cancelled on the termination date of
10 the private entity's bond unless a new bond is filed
11 with the State's Attorney to become effective at the
12 termination date of the prior bond. If a contract with
13 the State's Attorney has been cancelled under this
14 Section, the private entity must file a new application
15 and will be considered a new applicant if it obtains a
16 new bond.

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
23 negotiable instruments received may be forwarded directly
24 to a victim of the deceptive practice committed by the
25 offender if that procedure is provided for by a writing
26 executed by the victim. Moneys received shall be so
27 deposited within 5 business days after posting to the
28 private entity's books of account. There shall be
29 sufficient funds in the trust account at all times to pay
30 the victims the amount due them.

31 (B) The trust account shall be established in a
32 bank, savings and loan association, or other
33 recognized depository which is federally or State
34 insured or otherwise secured as defined by rule. If

1 the account is interest bearing, the private entity
2 shall pay to the victim interest earned on funds on
3 deposit after the 60th day.

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

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

21 (A) Conviction of the private entity or the
22 principals of the private entity of any crime under
23 the laws of any U.S. jurisdiction which is a felony,
24 a misdemeanor an essential element of which is
25 dishonesty, or of any crime which directly relates
26 to the practice of the profession.

27 (B) A finding by the Federal Trade Commission
28 that the private entity violated the Federal Fair
29 Debt and Collection Act or its rules.

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

32 (4) A private entity that administers a bad check
33 diversion program for a State's Attorney shall not engage
34 in any of the following conduct:

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

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

9 (C) Disclosing or threatening to disclose
10 information adversely affecting an offender's
11 reputation for credit worthiness with knowledge the
12 information is false.

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

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

28 (i) Communicating with the offender or any
29 member of his or her family at any unusual time or
30 place or a time or place known or which should be
31 known to be inconvenient to the offender. In the
32 absence of knowledge of circumstances to the
33 contrary, a private entity shall assume that the
34 convenient time for communicating with a consumer is

1 after 8 o'clock a.m. and before 9 o'clock p.m. local
2 time at the offender's location.

3 (ii) The threat of publication or publication
4 of a list of offenders who allegedly refuse to pay
5 debts, except to a consumer reporting agency.

6 (iii) The threat of advertisement or
7 advertisement for sale of any debt to coerce payment
8 of the debt.

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

13 (v) Using profane, obscene or abusive
14 language in communicating with a offender, his or
15 her family, or others.

16 (vi) Disclosing or threatening to disclose
17 information relating to a offender's indebtedness to
18 any other person except where the other person has a
19 legitimate business need for the information or
20 except where such disclosure is regulated by law.

21 (vii) Disclosing or threatening to disclose
22 information concerning the existence of a debt which
23 the private entity knows to be reasonably disputed
24 by the offender without disclosing the fact that the
25 offender disputes the debt.

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

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

33 (x) Except as authorized by the State's
34 Attorney, using any form of communication which

1 simulates legal or judicial process or which gives
2 the appearance of being authorized, issued or
3 approved by a governmental agency or official or by
4 an attorney at law when it is not.

5 (xi) Except as authorized by the State's
6 Attorney, using any badge, uniform, or other indicia
7 of any governmental agency or official except as
8 authorized by law.

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

16 (xiii) Misrepresenting the amount of the claim
17 or debt alleged to be owed.

18 (xiv) Representing that an existing
19 restitution amount may be increased by the addition
20 of attorney's fees, investigation fees, or any other
21 fees or charges when those fees or charges may not
22 legally be added to the existing restitution.

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

27 (xvi) Collecting or attempting to collect any
28 interest or other charge or fee in excess of the
29 actual restitution or claim unless the interest or
30 other charge or fee is expressly authorized by the
31 State's Attorney, who shall determine what
32 constitutes a reasonable collection fee.

33 (xvii) Communicating or threatening to
34 communicate with a offender when the private entity

1 is informed in writing by an attorney that the
2 attorney represents the offender concerning the
3 claim, unless authorized by the attorney. If the
4 attorney fails to respond within a reasonable period
5 of time, the collector may communicate with the
6 offender. The collector may communicate with the
7 offender when the attorney gives his consent.

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

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

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

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

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

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

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

28 on page 3 by inserting between lines 30 and 31 the following:

29 "(i) The offender, if aggrieved by an action of the
30 private entity contracted to operate a bad check diversion
31 program, may submit a grievance to the State's Attorney who

1 may then resolve the grievance. The private entity must give
2 notice to the offender that the grievance procedure is
3 available. The grievance procedure shall be established by
4 the State's Attorney and shall be substantially similar to
5 the procedure used to resolve disputes under the federal Fair
6 Credit Reporting Act."