

# HB0239



## 95TH GENERAL ASSEMBLY

### State of Illinois

2007 and 2008

HB0239

Introduced 1/19/2007, by Rep. Timothy L. Schmitz

#### SYNOPSIS AS INTRODUCED:

720 ILCS 5/17-1b

Amends the Criminal Code of 1961. Provides that the fee collected from an offender diverted to the State's Attorney's bad check diversion program may be used in the enforcement and prosecution of criminal laws.

LRB095 04650 RLC 24708 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.)