

MAINE STATE LEGISLATURE

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INSURANCE AND FINANCIAL SERVICES

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STATE OF MAINE
HOUSE OF REPRESENTATIVES
124TH LEGISLATURE
FIRST REGULAR SESSION

COMMITTEE AMENDMENT "A" to H.P. 356, L.D. 511, Bill, "An Act To Support District Attorney Check Diversion Programs"

Amend the bill by striking out the title and substituting the following:

'An Act To Support Pretrial Diversion Programs for Issuers of Worthless Checks'

Amend the bill by striking out everything after the enacting clause and before the summary and inserting the following:

Sec. 1. 32 MRSA §11003, sub-§7, ¶D, as enacted by PL 1985, c. 702, §2, is amended to read:

D. Concerns a debt obtained by that person as a secured party in a commercial credit transaction involving the creditor; and

Sec. 2. 32 MRSA §11003, sub-§8, as enacted by PL 1985, c. 702, §2, is amended to read:

8. Collection activities related to the operation of a business. Any person whose collection activities are confined to and directly related to the operation of a business other than that of a debt collector, such as, but not limited to, financial institutions regulated under Title 9-B; and

Sec. 3. 32 MRSA §11003, sub-§9 is enacted to read:

9. Certain pretrial diversion programs for issuers of worthless checks. A private entity operating a worthless check enforcement program that meets the conditions set forth in section 11013-A, subsection 3.

Sec. 4. 32 MRSA §11013-A is enacted to read:

§11013-A. Exception for certain pretrial diversion programs for issuers of worthless checks operated by private entities

1. Definitions. As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

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1 A. "Check" has the same meaning as in Title 14, section 6071, subsection 4.

2 B. "State or district attorney" means the chief elected or appointed prosecuting
3 attorney in a district, county, municipality or comparable jurisdiction, including the
4 Attorney General acting as chief elected or appointed prosecuting attorney in a
5 district, county, municipality or comparable jurisdiction, who is responsible for the
6 prosecution of state crimes and violations of jurisdiction-specific local ordinances.

7 C. "Worthless check violation" means a violation of Title 17-A, section 708,
8 subsection 1, paragraph A.

9 **2. Pretrial diversion program for issuers of worthless checks.** If a state or district
10 attorney wants to be excluded from consideration as a debt collector as provided in
11 section 11003, subsection 9, that state or district attorney shall establish, within the
12 jurisdiction of that state or district attorney and with respect to alleged worthless check
13 violations that do not involve a check described in subsection 4, a pretrial diversion
14 program for issuers of worthless checks who agree to participate voluntarily in that
15 program to avoid criminal prosecution.

16 **3. Conditions for exception.** A private entity operating a pretrial diversion program
17 for issuers of worthless checks that meets the following requirements is excluded from
18 being considered a debt collector.

19 A. The private entity must operate the pretrial diversion program for issuers of
20 worthless checks described in subsection 2 subject to an administrative support
21 services contract with the state or district attorney and under the direction,
22 supervision and control of that state or district attorney.

23 B. In the course of performing duties delegated to it by a state or district attorney
24 under an administrative support services contract, the private entity referred to in
25 paragraph A:

26 (1) Shall comply with the criminal laws of the State;

27 (2) Shall conform with the terms of the administrative support services contract
28 and directives of the state or district attorney;

29 (3) May not exercise independent prosecutorial discretion;

30 (4) Shall contact any issuer of an alleged worthless check for the purposes of
31 participating in a pretrial diversion program for issuers of worthless checks as
32 described in subsection 2:

33 (a) Only as a result of a determination by the state or district attorney that
34 probable cause of a worthless check violation under state criminal law exists,
35 and that contact with the issuer of an alleged worthless check for purposes of
36 participation in the program is appropriate; and

37 (b) Only if the issuer of an alleged worthless check has failed to pay the
38 worthless check after demand for payment is made for the check amount
39 pursuant to state law;

40 (5) Shall include as part of an initial written communication with an issuer of an
41 alleged worthless check a clear and conspicuous statement that:

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1 (a) The issuer of an alleged worthless check may dispute the validity of any
2 alleged worthless check violation;

3 (b) When the issuer of an alleged worthless check knows, or has reasonable
4 cause to believe, that the alleged worthless check violation is the result of
5 theft or forgery of the check, identity theft or other fraud that is not the result
6 of the conduct of the issuer of an alleged worthless check, the issuer of the
7 alleged worthless check may file a crime report with the appropriate law
8 enforcement agency; and

9 (c) If the issuer of an alleged worthless check notifies the private entity or
10 the state or district attorney in writing, not later than 30 days after being
11 contacted for the first time pursuant to subparagraph (4), that there is a
12 dispute pursuant to this subsection, before further restitution efforts are
13 pursued, the state or district attorney or an employee of that state or district
14 attorney must make a determination that there is probable cause to believe
15 that a crime has been committed; and

16 (6) May charge fees only in connection with services under the administrative
17 support services contract under paragraph A that have been authorized by the
18 contract with the state or district attorney.

19 **4. Certain checks excluded.** A check described in this subsection is not considered
20 a worthless check eligible for the pretrial diversion program for issuers of worthless
21 checks described in subsection 2 if the check involves or is subsequently found to
22 involve:

23 A. A postdated check presented in connection with a payday loan or other similar
24 transaction when the payee of the check knew that the issuer had insufficient funds at
25 the time the check was made, drawn or delivered;

26 B. A stop payment order when the issuer acted in good faith and with reasonable
27 cause in stopping payment on the check;

28 C. A check dishonored because of an adjustment to the issuer's account by the
29 financial institution holding that account without providing notice to the person at the
30 time the check was made, drawn or delivered;

31 D. A check for partial payment of a debt where the payee had previously accepted
32 partial payment for that debt;

33 E. A check issued by a person who was not competent or was not of legal age to
34 enter into a legal contractual obligation at the time the check was made, drawn or
35 delivered;

36 F. A check issued to pay an obligation arising from a transaction that was illegal in
37 the jurisdiction of the state or district attorney at the time the check was made, drawn
38 or delivered; or

39 G. A check that is the result of theft or forgery of the check, identity theft or other
40 fraud that is not the result of the conduct of the alleged worthless check offender.

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1 **5. Registration.** Notwithstanding the exemptions in subsections 3 and 4, a private
2 entity that operates a pretrial diversion program for issuers of worthless checks pursuant
3 to this section shall register with the administrator on forms acceptable to the
4 administrator and in a manner consistent with section 11031, subsection 2. Before
5 granting a registration pursuant to this subsection, the administrator shall:

6 A. Review the administrative support services contract under subsection 3, paragraph
7 A between the private entity and the state or district attorney;

8 B. Review all form communications to issuers of alleged worthless checks that will
9 be used as part of the pretrial diversion program for issuers of worthless checks; and

10 C. Review the quality controls to be implemented by the state or district attorney and
11 the private entity to ensure continued compliance with this section and to maintain
12 the exemption granted in section 11003, subsection 9.

13 **6. Enforcement.** To ensure compliance with this section, the administrator may
14 receive and act on complaints in accordance with Title 9-A, section 6-104, conduct
15 compliance examinations pursuant to Title 9-A, section 6-106 and exercise regulatory and
16 remedial authority pursuant to Title 9-A, Article 6.

17 **Sec. 5. Appropriations and allocations.** The following appropriations and
18 allocations are made.

19 **PROFESSIONAL AND FINANCIAL REGULATION, DEPARTMENT OF**

20 **Administrative Services - Professional and Financial Regulation 0094**

21 Initiative: Allocates funds for the one-time costs to establish a new registration category
22 in the agency's licensing system.

23	OTHER SPECIAL REVENUE FUNDS	2009-10	2010-11
24	All Other	\$2,500	\$0
25			
26	OTHER SPECIAL REVENUE FUNDS TOTAL	<u>\$2,500</u>	<u>\$0</u>
27			

28 **SUMMARY**

29 This amendment replaces the bill. It excludes from the definition of "debt collector"
30 those pretrial diversion programs for issuers of worthless checks operated under the
31 supervision of state or district attorneys' offices, while applying conditions and
32 protections found in the federal Fair Debt Collection Practices Act. It requires that a
33 private entity operating a pretrial diversion program for issuers of worthless checks
34 register with the Department of Professional and Financial Regulation, Bureau of
35 Consumer Credit Protection. The amendment also requires the Superintendent of
36 Consumer Credit Protection to review the contract between the private entity and the state

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or district attorney and the form communications used by private entities before granting a registration. It also adds an appropriations and allocations section.

FISCAL NOTE REQUIRED

(See attached)



124th MAINE LEGISLATURE

LD 511

LR 956(02)

An Act To Support District Attorney Check Diversion Programs

Fiscal Note for Bill as Amended by Committee Amendment "A"

Committee: Insurance and Financial Services

Fiscal Note Required: Yes

Fiscal Note

	2009-10	2010-11	Projections 2011-12	Projections 2012-13
Appropriations/Allocations				
Other Special Revenue Funds	\$2,500	\$0	\$0	\$0

Fiscal Detail and Notes

Provides an allocation of \$2,500 in 2009-10 to the Office of Administrative Services in the Department of Professional and Financial Regulation for the one-time costs of establishing a new registration category in the agency's licensing system.